

भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 28] नई दिल्ली शनिवार, जुलाई 12, 1969/आषाढ़ 21, 1891
No. 28] NEW DELHI, SATURDAY, JULY 12, 1969/ASADHA 21, 1891

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भारत के असाधारण राजपत्र 27 जून, 1969 तक प्रकाशित किये गये :—

The undermentioned Gazettes of India Extraordinary were published up to the 27th June, 1969 :—

Issue No.	No. and Date	Issued by	Subject
205	S.O. 2337, dated 16th June, 1969.	Ministry of Food, Agriculture, Community Development and Cooperation.	Tariff Values for 1969-70 for certain articles mentioned in the schedule therein.
	एम० ओ० 2338, दिनांक 16 जून, 1969।	खाद्य, कृषि, सामुदायिक विकास तथा सह-कारिता मंत्रालय।	अनुसूची में दी गई कुछ वस्तुओं के लिये 1969-70 के लिये टैरिफ मूल्य।
206	S.O. 2427, dated 17th June, 1969.	Ministry of Law.	Calling upon the elected members of the Legislative Assembly of the State of West Bengal to elect members to fill the seats of members of the Council of State who have retired.
	एस० ओ० 2428, दिनांक 17 जून, 1969।	विधि मंत्रालय	बंगाल राज्य की विधान सभा के निर्वाचित सदस्यों से राज्य सभा के 6 स्थानों को निर्वाचित करके भरने की अपेक्षा करना।

Issue No.	No. and Date	Issued by	Subject
207	S.O. 2429, dated 17th June, 1969.	Election Commission of India	Appointment of dates for the above biennial election. (S. O. 2427).
	S. O. 2430, dated 17th June, 1969.	Do.	Fixation of hours for the above biennial election (S.O. 2427).
	S. O. 2431, dated 17th June, 1969.	Do.	Designating the Secretary, West Bengal Legislative Assembly to be the Returning Officer for the above biennial election (S.O. 2427).
	S. O. 2432, dated 17th June, 1969.	Do.	Appointing Shri Rafiqueul Haque, Deputy Secretary, West Bengal Legislative Assembly to assist the Returning Officer for the above biennial election to the Council of States (S.O. 2427).
	एस० ओ० 2433, दिनांक 17 जून, 1969 ।	भारत निर्वाचन आयोग	उपरिलिखित निर्वाचन के लिये तारीख नियत करना (एस० ओ० 2428)
	एस० ओ० 2434, दिनांक 17 जून, 1969 ।	तद्वै	उपरिलिखित निर्वाचन के लिये समय का निर्धारण (एस० ओ० 2428)
	एस० ओ० 2435, दिनांक 17 जून, 1969 ।	तद्वै	उपरिलिखित निर्वाचन के लिये पश्चिमी बंगाल विधान सचिव को रिटर्निंग आफिसर के पद पर नियुक्ति ।
	एस० ओ० 2436, दिनांक 17 जून, 1969 ।	तद्वै	श्री रफीकूल हक, बंगाल विधान सभा के उप-सचिव की राज्य सभा के होने वाले द्विवार्षिक चुनाव के लिये रिटर्निंग आफिसर की सहायता करने के लिये नियुक्ति ।
208	S. O. 2437, dated 19th June, 1969.	Ministry of Information and Broadcasting.	Approval of the films as specified in the schedule therein.
	एस० ओ० 2438, दिनांक 19 जून, 1969 ।	सूचना तथा प्रसारण मंत्रालय	अनुसूची में दी गई फिल्मों को स्वीकृत करना ।
209	S. O. 2439, dated 20th June, 1969.	Election Commission of India.	Appointing the Secretary to the Lok Sabha as the Returning Officer for the Presidential election.
	S. O. 2440, dated 20th June, 1969.	Do.	Appointing Shri P. K. Patnaik, Deputy Secretary Lok Sabha Secretariat, Parliament House, New Delhi, as the Assistant Returning Officer at New Delhi for the Presidential election.

Issue No.	No. and Date	Issued by	Subject
	एस० ओ० 2441, दिनांक 20 जून, 1969।	भारत निर्वाचन आयोग	राष्ट्रपति निर्वाचन के लिये लोक सभा के सचिव को रिटनिंग आफिसर के रूप में नियुक्त करना।
	एस० ओ० 2442, दिनांक 20 जून, 1969।	तदैव	राष्ट्रपति निर्वाचन के लिये श्री पी० के० पटनायक उपसचिव, लोक सभा सचिवालय, संसद् भवन, नई दिल्ली को सहायक रिटनिंग आफिसर के रूप में नियुक्त करना।
210	S. O. 2443, dated 21st June, 1969.	Ministry of Home Affairs.	The Laccadive, Minicoy and Amindivi Islands (Appeals to Civil Courts) Removal of Difficulties Order, 1969.
	का० आ० 2444, दिनांक 21 जून, 1969।	गृह मंत्रालय	लक्कादीव, मिनिकोय और अमीन-दीवी द्वीप (सिविल न्यायालयों को अपील) कठिनाइयों का निराकरण आदेश 1969।
211	S. O. 2445, dated 21st June, 1969.	Ministry of Education and Youth Services.	The International Copy right (Fourth Amendment) Order, 1969.
	एस० ओ० 2446, दिनांक 21 जून, 1969।	शिक्षा तथा युवक सेवा मंत्रालय	अन्तर्राष्ट्रीय कॉपीराइट (चतुर्थ) संशोधन आदेश 1969।
212	S. O. 2447, dated 21st June, 1969.	Ministry of Finance	Amendment in the Tax Credit Certificate (Shifting of Industrial Undertakings) Scheme, 1967.
213	S. O. 2448, dated 21st June, 1969.	Ministry of Food, Agriculture, Community Development and Cooperation.	Fixation of maximum prices at which vegetable oil products may be sold in various zones.
214	S. O. 2449, dated 23rd June, 1969.	Ministry of Foreign Trade and Supply.	The Exports (Control) Eleventh Amendment Order, 1969.
215	S. O. 2450, dated 23rd June, 1969.	Do.	The Exports (Control) Twelfth Amendment Order, 1969.
216	S. O. 2451, dated 24th June, 1969.	Ministry of Industrial Development, Internal Trade and Company Affairs.	Appointment of a body of persons for making full and complete investigation into the fall of production in respect of cotton textiles manufactured in M/s. Digvijay Spinning & Weaving Co. Ltd. Bombay.
217	S. O. 2452, dated 24th June, 1969.	Ministry of Information and Broad-casting.	Approval of the films as specified therein.
	एस० ओ० 2453, दिनांक 24 जून, 1969।	सूचना तथा प्रसारण मंत्रालय	अनुसूची में दी गई फिल्मों को स्वीकृत करना।

Issue No.	No. and Date	Issued by	Subject
218	S. O. 2557, dated 24th June, 1969	Election Commission of India.	Appointing the Secretary to the Legislative Assembly of each State to be the Assistant Returning Officer for the Presidential Election.
	एस० ओ० 2558 दिनांक 24 जून, 1969।	भारत निर्वाचन आयोग	राष्ट्रपतीय निर्वाचन के प्रयोजनों के लिये प्रत्येक राज्य की विधान सभा के सचिव को सहायक रिटर्निंग आफिसर के रूप में नियुक्त करना।
219	S. O. 2559, dated 26th June, 1969.	Ministry of Foreign Trade & Supply.	The Export of P. V. C. Leather Cloth (Inspection) Amendment Rules, 1969.
	S. O. 2560, dated 26th June, 1969.	Do.	Amendment in notification No. S. O. 2378, dated 6th August, 1966.
220	S. O. 2561, dated 27th June, 1969.	Ministry of Finance	Securities Contracts.

ऊपर लिखे असाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जाएंगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुंच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) कन्द्रीय प्राधिकरणों द्वारा जारी किये गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 27th June 1969

S.O. 2708.—In pursuance of clause (a) of section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, the Central Government hereby authorises Shri Kanwar Krishan, Assistant in the Consulate General of India, Berlin to perform the duties of a Consular Agent, with effect from 1st June, 1966, until further orders.

[File No. T. 4330/7/69]

P. C. BHATTACHARJEE, Under Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 3rd July 1969

S.O. 2709.—In pursuance of section 3 of the Census Act, 1948 (37 of 1948), the Central Government is pleased to declare that a census of the population of India shall be taken during the year 1971. The reference date for the census will be the sunrise on 1st March, 1971.

[No. 28/101/69-Pub.I.]

K. R. PRABHU, Joint Secy.

CORRIGENDUM

New Delhi, the 1st July 1969

S.O. 2710.—Corrigendum to Ministry of Home Affairs [Border Security (I) Section] Notification S.O. 2336 dated 9th June 1969 published in the Gazette of India Extra ordinary Part II-Section 3-Sub-Section (ii) on 13th June, 1969.

In rule 13(2) 4th line. For the word "consent" substitute "consents".

In rule 15(1) (ii) 1st Line. Delete "s" from the word "exist".

In rule 18(2) 1st line. Add "shall" after "medical board"

In rule 19(2) 2nd line. For the word "experient" read "expedient"

In rule 19(3) (c) 1st line. Add "for a specified period" after "undertaken to serve"

In rule 20(3) Proviso, 2nd line. read "itnesses" as "witnesses"

In rule 21(2) 1st line. Read "No counset of" as "No counsel or"

In rule 25(3) 2nd line. Add "the Inspector General, the Deputy Inspector General or "after "service in the Force"

In rule 29 3rd line. Read "office" as "officer"

In rule 43 3rd line. Read "set at" as "set out"

In rule 48 (6) (a) 2nd line. Read "office" as "officer"

In rule 49 (2) (a) (1). Delete "or" after "thereof"

In rule 81 (3). Read sub clause "c" as sub rule "(4)"

In rule 82 Heading. Read "Change or plea" as "Change of plea"

In rule 82 3rd line. Read "guilty under the" as "guilty under rule"

In rule 101(3) 4th line. Add "any" after "summary is in"

In rule 106(6) 1st line. Read "on a plea" as "or a plea"

In rule 106(6) 2nd line. Read "rule 79" as "rule 77"

In rule 131(4) last line. Read "proceeding" as "proceedings"

In rule 138 Heading. Read "Arrangement" as "Arraignment"

In rule 140(2) 3rd line. Read "Change if required" as "change is required".

In rule 165 2nd line. Read "chcange" as "change".

In rule 170 3rd line. Read "officers of both" as "officers or both".

In Appendix I Col. 5. Read "Hair" as "Heir"

In Appendix I Col. 9. Read "name if the party" as "name of the party"

In Appendix I Part II Col. 1. 2nd line. Read "period of which" as "period for which"

In Appendix II Col. 4. Delete "of" after "Date"

In Appendix XIII IV. Instructions Col. 5 Read "accordande" as "accordance"

In Appendix XIII Col. 10. 2nd line. Read "marks on" as "marks of"

In Appendix XIV Col. 5, 7th line. Delete "with" after "not to be dismissed".

[No. F. 31/11/69-BS.I.]

G. BALAKRISHNAN, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 30th June 1969

S.O. 2711.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Canara Bank Ltd., Mangalore in respect of the immovable property (comprised in C. S. Nos. 266 and 299 and measuring about 903 sq. yards) held by it at Kazi Syed Street, Mandvi, Bombay, till the 28th March, 1972.

[No. 15(7)-BC/69.]

New Delhi, the 3rd July 1969

S.O. 2712. - Statement of the Affairs of the Reserve Bank of India, as on the 27th June, 1969

BANKING DEPARTMENT

LIABILITIES		Rs.	ASSETS		Rs.
Capital Paid Up	. . .	5,00,00,000	Notes	. . . . .	24,09,95,000
			Rupee Coin	. . . . .	3,66,000
Reserve Fund	. . .	150,00,00,000	Small Coin	. . . . .	2,97,000
National Agricultural Credit (Long Term Operations) Fund	. . .	143,00,00,000	Bills Purchased and Discounted :—		
			(a) Internal	. . . . .	..
			(b) External	. . . . .	..
			(c) Government Treasury Bills	. . . . .	145,67,01,000
National Agricultural Credit (Stabilisation) Fund	. . .	33,00,00,000	Balances Held Abroad*	. . . . .	129,20,06,000
National Industrial Credit (Long Term Operations) Fund	. . .	55,00,00,000	Investments**	. . . . .	249,00,89,000
			Loans and Advances to :—		
			(i) Central Government	. . . . .	..
			(ii) State Governments@	. . . . .	36,79,07,000
Deposits:—			Loans and Advances to :—		
			(i) Scheduled Commercial Banks†	. . . . .	172,22,10,000
(a) Government—			(ii) State Co-operative Banks††	. . . . .	202,19,00,000
(i) Central Government		51,85,41,000	(iii) Others	. . . . .	2,03,45,000

LIABILITIES	Rs.	ASSETS	Rs.
		Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund—	
(i) State Governments	12,27,28,000	(a) Loans and Advances to :—	
		(i) State Governments	31,46,96,000
		(ii) State Co-operative Banks	16,78,39,000
		(iii) Central Land Mortgage Banks . . . . .	..
(b) Banks—		(b) Investment in Central Land Mortgage Bank Debentures	8,96,93,000
(i) Scheduled Commercial Banks	194,72,25,000	Loans and Advances from National Agricultural Credit (Stabilisation) Fund—	
(ii) Scheduled State Co-operative Banks	19,02,55,000	Loans and Advances to State Co-operative Banks	5,18,51,000
(iii) Non-Scheduled State Co-operative Banks	65,18,000		
(iv) Other Banks	34,36,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—	
(c) Others	230,96,93,000	(a) Loans and Advances to the Development Bank	6,26,71,000
Bills payable	48,22,34,000	(b) Investment in bonds/debentures issued by the Development Bank	
Other Liabilities	138,50,09,000	Other Assets	52,60,73,000
Rupees	1082,56,39,000	Rupees	1082,56,39,000

*Includes Cash, Fixed Deposits and Short-term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@ Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary over-drafts to State Governments.

†Includes Rs. 115,20,00,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 2nd day of July 1969.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 27th day of June, 1969

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	24,09,95,000		Gold Coin and Bullion :—		
Notes in Circulation	3686,43,11,000		(a) Held in India	182,53,11,000	
Total Notes issued		3710,53,06,000	(b) Held outside India	..	
			Foreign Securities	226,42,00,000	
			TOTAL		408,95,11,000
			Rupee Coin		64,39,34,000
			Government of India Rupee Securities		3237,18,61,000
			Internal Bills of Exchange and other commercial paper		..
TOTAL LIABILITIES		3710,53,06,000	TOTAL ASSETS		3710,53,06,000

Dated the 2nd day of July, 1969.

B. N. ADARKAR,
Dy. Governor.
[N. F. 3(3)-BC/69.]

ORDER

New Delhi, the 30th June 1969

S.O. 2713—Whereas the Central Government is satisfied that nothing further remains to be done in order to wind up the affairs of the Govind Bank Private Ltd.;

Now, therefore, in exercise of the powers conferred by sub-section (11) of section 38 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government hereby directs that on and from the 14th day of July, 1969 the said Govind Bank Private Ltd. shall stand dissolved.

[No. F.4/2/69-SB.]

K. YESURATNAM. Under Secy.

वित्त मंत्रालय

(अर्थ विभाग)

आदेश

नई दिल्ली, 30 जून 1969

एस० ओ० 2714:—बूकि केन्द्रीय सरकार को इस बात का सन्तोष हो गया है कि गोविन्द बैंक प्राइवेट लिमिटेड के कार्यों के समापन के लिए अन्य कुछ और करना बाकी नहीं रहा है;

इसलिए अब भारतीय राज्य बैंक (सहायक बैंक) अधिनियम 1959 (1959 के 38 वें अधिनियम) की धारा 38 की उपधारा (11) द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए, केन्द्रीय सरकार एतद् द्वारा यह निदेश देती है कि 16 जुलाई, 1969 को और उस तारीख से उक्त गोविन्द बैंक प्राइवेट लिमिटेड का विघटन हो जायगा।

[सं० एफ० 4/2/69-एस० बी०]

के० ये० सुरत्तम, अनु-सचिव।

(राजस्व और बीमा विभाग)

आदेश

वि० मु० वि० अ०

नई दिल्ली, 5 जुलाई 1969

एस० ओ० 2715:—विदेशी मुद्रा विनियमन अधिनियम, 1947 (1947 का 7) की धारा 2 ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार प्रवर्तन के सभी आकिसरों को जो मुख्य प्रवर्तन आकिसर के या उससे ऊपर के बैंक के हैं, उक्त अधिनियम की धारा 19 च के अधीन प्रवर्तन-निदेशक की सभी शक्तियों का प्रयोग करने के लिए एतद् द्वारा प्राधिकृत करती है।

[सं० 2/69-वि० मु० वि० अ०/का० सं० 1/3/68 तक० समन्वय]

आर० सी० मिश्रा, उप-सचिव।

**OFFICE OF THE DEPUTY COLLECTOR, CUSTOMS AND CENTRAL
EXCISE: AMRITSAR**

Amritsar, the 11th June 1969

Amendment to Notification issued under Rules 15 and 16 of Central Excise Rules, 1944 under C. No. V(4)DS/30/8CE/68/Pt. 123075-109, dated 30th October, 1968 by the Deputy Collector, Customs and Central Excise, Amritsar.

S.O. 2716.—In exercise of the powers conferred upon me under Rules 15 and 16 of the Central Excise Rules, 1944, I hereby make the following amendments to the Notification issued under C. No. V(4)DC/30/8CE/68/Pt.I/23075/109, dated 30th October, 1968.

1. For the words "all villages except Beaspur, Gazla, Chohala, Kotli Main Tateh, Slehar, Chak Harni, Makhanpur, Phinder, Laswara, Deoli, Dubber I/II/III, Pandorian Brahmanan, Bishna, Chorli, Chumblian Jattan, Banachak and Arnla" occurring in Col. 7 against Tehsil, R. S. Pura of Jammu Sub-Circle, the following shall be substituted. "All the villages except Kheri, Deoli, Laswara, Makhanpur, Phinder, Chak Harni, Chorli, Banachak, Chumblian Jattan, Beaspur, Chohalla, Pandorian, Pandorian Brahmanan, Manheson."

2. For the words "All villages except Chanda Devi, Kathunangal, Kakar Singh Wala, Fatehpur, Bhullarwal, Muzzafarpur, Avan Lakha Singh and Chamelari" occurring in Column 7, against Tehsils of Amritsar, Ajnala, Patti and Tara Taran of Amritsar District (M.O.D.) Amritsar, the following shall be substituted :

"All villages except Chanda Devi, Kathunangal, Kakar Singh Wala, Fatehpur, Bhullarwal, Muzzafarpur, Avan Lakha Singh Chamelari, Ajnala, Karyal, Sarangra, Majitha, Meharpur, Patti, Kalsian Kalan and Jandiala".

[C. No. V(4)DC/30/8CE/68/Pt.I/11009-40.]

N. N. ROY CHOUDHURY,
Deputy Collector.

MINISTRY OF EDUCATION AND YOUTH SERVICES

ARCHAEOLOGY

New Delhi, the 28th June 1969

S.O. 2717.—Whereas the Central Government is of opinion that the ancient monuments specified in the Schedule attached hereto are of national importance.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives notice of its intention to declare the said ancient monuments to be of national importance.

Any objection made within two months after the issue of this notification by any person interested in the said ancient monuments will be considered by the Central Government.

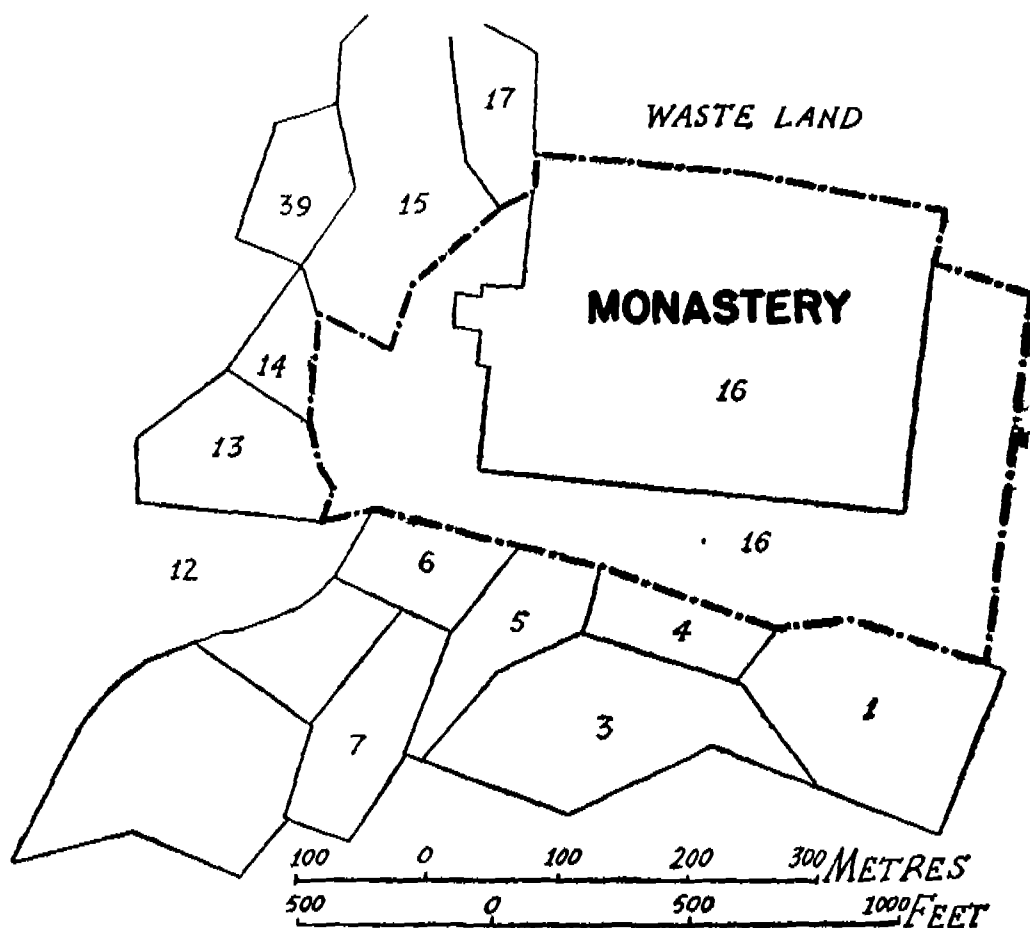
THE SCHEDULE

Sl. No.	State	District	Tahsil	Locality	Name of monuments	Revenue plot numbers to be included under Protection.	Area	Boundaries	Ownership	Remarks
I	2	3	4	5	6	7	8	9	10	11
1	Himachal Pradesh	Lahaul and Spiti	Kaza	Tabo	Buddhist Monastery together with adjacent area comprised in survey plot No. 16 as shown on the attached plan.	Survey plot No. 16 as shown on the attached plan.	15 Biswas and 15 Biswansi.	North :— Waste land East:— Waste land South :— Survey plot Nos. 1, 4, 5, 6 and 12 West :— Survey plot Nos. 13, 14, 15, and 17.	Village Property	
2	Himachal Pradesh	Lahaul and Spiti	Kaza	Ki	Buddhist Monastery together with adjacent land comprised in part of Survey plot No. 23 as shown on the attached plan.	Part of Survey plot No. 23 as shown on the attached plan.	15 Biswas and 7 Biswansi.	North :— Remaining portion of Survey Plot No. 23 East :— Remaining portion of Survey plot No. 23.	Private	

South :—
Remaining por-
tion of Survey
plot No. 23.

West :—
Remaining por-
tion of Survey
plot No. 23.

SITE PLAN OF TABO MONASTERY AT TABO



• **LIMITS OF PROPOSED PROTECTION** _____

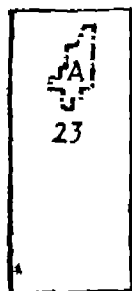
SITE PLAN OF KI MONASTERY

AT KI

0 2 4 6 8 10 12 METRES.

0 2 4 6 8 10 12 YARDS

DETAIL A



0 50 100 150 METRES.

0 50 100 150 YARDS.



23

KI MONASTERY

OPEN AREA

LIMITS OF PROPOSED PROTECTION

23

[No. F.3/22/68-CAI(I)
P. SOMASEKHARAN, Dy. Se

MINISTRY OF PETROLEUM AND CHEMICALS AND MINES AND METALS

(Department of Petroleum)

New Delhi, the 27th June 1969

S.O. 2718.—Whereas by a notification of the Government of India in the Ministry of Petroleum & Chemicals S. O. No. 1592 dated the 16th April, 1969 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

Laying pipeline from well No. 103 (K. H. R.) to G. G. S. VI.

STATE : GUJARAT

DISTT. : MEHSANA

TALUKA : KADI

Village	S. No.	Hactare	Are	P. Are
CHADASAN	416	0	16	89
ZULASAN	536/1	0	5	46

[No. 20/3/67-I.O.C./Lab. & Legis.]

S.O. 2719.—Whereas by a notification of the Government of India in the Ministry of Petroleum & Chemicals S. O. No. 1593 dated 16th April, 1969 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said land specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHLD JLE

Laying Pipelines from well No. 46 (K.C.A.) to well No. 99 (K.H.S.)

STATE : GUJARAT

DIST : MEHSANA

TALUKA : KADI

Village	S. No.	Hectare	Are	P. Are
ZULASAN . . .	955	0	7	28
	954	0	5	06
	953	0	6	37
	959/1	0	4	35
	960	0	8	89
	961	0	23	54
	V. P. Cart-track	0	1	10
	664/2	0	13	65
	V. P. Cart-track	0	0	50
	657/1	0	17	29
	635	0	11	93
	616/3	0	1	61
	616/1 & 2	0	12	84
	629/2	0	11	73

[No. 20/3/67-I O.C./Lab. & Legis.(A).]

New Delhi, the 28th June 1969

S O. 2720.—Whereas by a notification of the Government of India in the Ministry of Petroleum & Chemicals S. O. No. 1589 dated the 16th April, 1969 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

Laying pipeline from G. G. S. VI to well No. 90 (K. B. S.)

STATE : GUJARAT

DISTT : MEHSANA

TALUKA : KADI

Village	S. No.	Hactare	Are	P. Are
ZULASAN . . .	557	0	1	41
	558/1 & 558/B	0	8	59
	558/A	0	6	37
	V. P. Cart-track	0	2	82
	559/1	0	24	36
	559/2	0	6	27

Village	S. No.	Hactare	Arc.	P. Arc
CHADASAN . . .	411	0	9	90
	416	0	18	21
	343	0	15	98
	342	0	22	04
	357	0	7	07
	358	0	6	17
	359/1	0	8	02
	V. P. Road	0	2	12
	312	0	16	98
	301	0	1	00

[No. 20/3/67-I.O.C./Lab. & Legis]

S.O. 2721.—Whereas by a notification of the Government of India in the Ministry of Petroleum & Chemicals S. O. No. 1590 dated the 16th April, 1969, under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

Laying pipeline from well No. 98 (K. H. P.) to G. G. S. VI

STATE : GUJARAT

DISTT. : MEHSANA

TALUKA : KALOL

Village	S. No.	Hactare	Arc.	P. Arc
PANSAR . . .	111/2	0	3	74
	112/6	0	18	21
	112/5	0	5	16
	112/4	0	4	65
	112/3	0	4	75
	112/1	0	7	48
	V. P. Cart track	0	0	45
ZULASAN . . .	V. P. Cart track	0	0	45
	535/4	0	3	74
	535/5	0	3	24
	535/3	0	1	21
	535/2	0	3	24
	535/1	0	3	52
	536/5	0	5	26
	536/1	0	4	05
	536/4	0	2	00
	557	0	12	14

[No. 20/3/67-I.O.C./Lab & Legis. (A)]

S.O. 2722.—Whereas by a notification of the Government of India in the Ministry of Petroleum & Chemicals S. O. No. 1591 dated the 16th April, 1969, under sub-section (1) of Section 3 of the Petroleum pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

Laying pipeline from well No. 99 (K. H. S.) to G. G. S. VI.

STATE : GUJARAT

DISTT : MEHSANA

TALUKA : KADI

Village	S. No.	Hactare	Acre	P. Acre
TULASAN	626/1	0	3	24
	626/2	0	8	09
	562	0	11	63
	560	0	9	51
	V. P. Cart-track	0	0	80
	558/A	0	3	24
	558/B & 558/1	0	8	59
	557	0	1	41

[No. 20/3/67-I.O.C./Lab. & Legis. (B).]

M. V. S. PRASADA RAU, Under Secy.

(Departments of Petroleum and Chemicals)

ORDER

New Delhi, the 4th July 1969

S.O. 2723.—In pursuance of sub-paragraph (3) of paragraph 3 of the Petroleum Products (Collection of Information) Order, 1966, the Central Government hereby specifies that in the case of Light Diesel Oil every Oil Distributing Company shall furnish to the Government of Gujarat in writing every Wednesday the following information for the previous week in respect of its each main port installation and depot within the State of Gujarat,

- (1) Opening stock held by it on the preceding Monday.
- (2) Receipts during the week.

- (3) Total availability.
- (4) Quantities despatched to areas in Gujarat State, District-wise.
- (5) Quantities despatched to areas outside Gujarat State.
- (6) Balance stock in hand.

[No. F.45(5)/69/IOC.]

P. P. GUPTA, Under Secy.

MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS

(Development of Industrial Department)

(Indian Standards Institution)

New Delhi, the 27th June 1969

S.O. 2724.—The Certification Marks Licences, details of which are mentioned in the Schedule given hereafter, have lapsed or their renewal deferred :

SCHEDULE

Sl. No.	Licence No. and Date	Licensee's Name and Address	Article/Process and the Relevant IS : No.	S.O. Number and Date of the Gazette Notifying Grant of Licence	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1	CM/L-180 30-3-1968	Shiv Scientific & Chemicals, 55 Industrial Estate, Agra (U.P.)	Nitric acid, pure and analytical reagent grades— IS : 264-1950	S.O. 917 dated 16-4-1960	Deferred after 15-4-1969.
2	CM/L-295 28-4-1961	Bharat Pulverising Mills Pvt. Ltd 38-A Sayani Road, Bombay-28.	Endrin emulsifiable concentrates IS : 1310-1958.	S.O. 1119 dated 20-5-1961	Deferred after 15-5-1969.
3	CM/L-473 20-11-62	Chandra Electricals, S/2638 Club Road, Varanasi cantt. (U.P.)	Electric motors— IS : 996-1964 & IS : 325-1961	..	Deferred after 30-4-1969.
4	CM/L-564 19-7-1963	Associated Tube Wells (India) Pvt. Ltd., Modinagar having their office at 12 Scindia House, New Delhi.	Flushing cisterns for water closets and urinals, valveless siphonic type, high level— IS : 774-1964	S.O. 2372 dated 24-8-1963	Lapsed after 31-5-1969.
5	CM/L-653 28-4-1964	Apand Water Meter Mfg. Co. Palluruthy, Industrial Area, Cochin-5 (Kerala)	Water meters, domestic type— IS : 779-1965	S.O. 1676 dated 16-5-64	Deferred after 31-5-1969.
6	CM/L-658 29-4-1964	Annapura Pulverising Mills, Industrial Estate, Eluru, W.G. Distt. (Andhra).	DDT water dispersible powder concentrates— IS : 565-1961	Do.	Deferred after 31-5-1969.
7	CM/L-1064 30-4-1965	The Plant Protection Products Pvt. Ltd., Kodavallur (S. Rly.), Nellore Distt having their Office at 4, 90-A Nawabpet, Nellore-2 (A.P.)	BHC dusting powders— IS : 561-1962	S.O. 1592 dated 22-5-1965	Deferred after 15-5-1969.

(1)	(2)	(3)	(4)	(5)	(6)
8	CM/L-1065 13-5-1965	Ruby Rubber Works Ltd., Ruby-nagar Post Office, Vazhappalli East, Changanacherry (Kerala).	Bicycle tyres— IS : 2414-1963	S.O. 2132 dated 3-7-1965	It was deferred after 31-5-1967 and has now to be treated as lapsed after that date.
9	CM/L-1116 28-7-1965	Oriental Refrigeration & Engg. Co. Pvt. Ltd., Najafgarh Rd., New Delhi-15 having their Regd. Office at Lakshmi Bldg. (First Floor), Asaf Ali Rd. P.O. Box No. 563, New Delhi-1.	Domestic refrigerators (mechanically operated) 5'3 ft., 6'5 ft. and 10 ft. volume— IS : 1476-1959	S.O. 2667 dated 28-8-1965	It was deferred after 31-7-1967 and has now to be treated as lapsed after that date.
10	CM/L-1160 20-10-1965	Bharat Pulverising Mills Pvt. Ltd., Hexamar House, 28-A Sayani Road, Bombay-28.	Malathion dusting powders— IS : 2568-1963	S.O. 3586 dated 20-11-65	Deferred after 15-5-1969.
11	CM/L-1229 23-3-1966	Dhanpat Mal Jawala Das Feed Mills, 33 Najafgarh Industrial Area, New Delhi-15 (factory under the style of Nandi Provender Mills).	Poultry feeds growing, laying and starting—IS : 1374-1964	S.O. 1263 dated 23-4-66	Deferred after 15-4-1969.
12	CM/L-1291 30-6-1966]	Dairy Equipment Co., 111 Hind Rajasthan Industrial Estate, Naigaon Cross Road, Wadala, Bombay-31 having their Office at 204 Dr. D. N. Road, National Insurance Bldg. Bombay-1.	Lock stoppers and double ended stoppers for use with butyrometers—IS : 1223-1958	S.O. 2248 dated 30-7-66	It was deferred after 30-6-67 has now to be treated as lapsed after that date.
13	CM/L-1561 14-11-1967	Metropole Industries, Pradhankota, Distt. Dhanbad, Bihar.	Endrin emulsifiable concentrates IS : 13-10-1958	S.O. 4568 dated 23-12-67	Deferred after 15-5-1969.
14	CM/L-1563 14-11-1967	Rajasthan Cable Industries Pvt. Ltd. Heavy Industrial Area Kota-3 (Rajasthan)	PVC insulated cables with aluminium conductors 250/440 and 650/1100 Volts grade, single core, unsheathed and PVC sheathed— IS : 694 (Part II)-1964	Do.	Deferred after 15-5-1969.
15	CM/L-1567 24-11-1967	Keen Pesticides (Pvt) Ltd., Industrial Estate, Mudical P.O. (Via) Perumbanoor, Kerala.	DDT water dispersible powder concentrates—IS : 565-1961]	Do.	Deferred after 31-5-1969.

16	CM/L-1670 3-4-1968	Kishangirh, Naroda, Distt. Ahmedabad.	Chlordane, Emulsifiable con- centrates— IS : 2682-1966	S.O. 2127 dated 15-6-68	Deferred after 15-5-1969
17	CM/L-1676 16-4-1968	Hindustan Wires Ltd., B.T. Road, Sodepur 24 Parganas.	Structural steel (Ordinary quality) IS : 1977-1962	Do.	It was deferred after 30-4-1969 and has to be treated as lapsed after that date.
18	CM/L-1677 22-4-1968	Deepak Pulverizers, Kolshet Road, Thana, (Near Power House), (Maharashtra).	Malathion emulsifiable concen- trates—IS : 2567-1963	Do.	Deferred after 30-4-1969
19	CM L-1684 30-4-1968	Marvel Pvt Ltd, C-18 Naroda Industrial Estate, Naroda, Ahmedabad (Gujarat).	Enirin emulsifiable concentrates— IS : 1310-1958	Do.	Deferred after 30-4-1969
20	CM/L-1685 30-4-1968	Western Corporation, Jullundur.	Volleyballs, laceless—IS : 417-1965	Do.	Deferred after 30-4-1969
21	CM/L-1692 13-5-1968	P.V.C. Wires and Cables Pvt. Ltd. 1, Ishan Ghosh Road, Calcutta-8	Hard-drawn stranded aluminium and steel-cored aluminium conductors for overhead power transmission purposes— IS : 398-1961	S.O. 2426 dated 6-7-1968	Deferred after 15-5-1969
22	CM/L-1701 17-5-1968	Azro Industrial Chemicals Co., Rudrapur, Distt. Nainital (U.P.)	BHC dusting powders—IS : 561-1962	Do.	Deferred after 31-5-1969
23	CM/L-1704 21-5-1968	Chemical and Insecticides, Go- rakhpur (U.P.)	BHC dusting powders—IS : 561- 1962	Do.	Deferred after 31-5-1969

[No. CMD/13 : 14]
A. K. GUPTA,
Deputy Director General.

MINISTRY OF INFORMATION AND BROADCASTING*New Delhi, the 1st July 1969*

S.O. 2725.—In exercise of the powers conferred by clause (b) of Sub-section (2) of section 6 of the Cinematograph Act, 1952 (37 of 1952), the Central Government hereby directs that the film "The Young Runaways" in respect of which Certificate No. 56920-U dated 26th March, 1969 was granted by Central Board of Film Censors may be deemed to be a film for which Certificate restricted to audiences of Adults only has been granted for exhibition in the whole of India with effect from the date of issue of this Notification.

[No. F. 8/6/69-FC.]

BANU RAM AGGARWAL, Under Secy.

MINISTRY OF HEALTH, FAMILY PLANNING, W.H. AND U.D.**(Department of Health)****ORDERS***New Delhi, the 30th June 1969*

S.O. 2726.—Whereas by the notification of the Government of India in the late Ministry of Health No. 16-28/68-MI., dated the 31st January, 1963, the Central Government has directed that the Medical qualification, "Doctor of Medicine" granted by the University of Michigan Medical School, U.S.A., shall be reorganised medical qualification for the purposes of the Indian Medical Council Act, 1956 (102 of 1956);

And whereas Dr. J. P. Veldman who possesses the said qualification is for the time being attached to the Wanless Hospital, Miraj Medical Centre, Miraj for the purpose of teaching, research and charitable work;

Now, therefore, in pursuance of clause (c) of the proviso to sub-section (1) of section 14 of the said Act, the Central Government hereby specifies—

- (i) a further period of two years commencing from the 23rd February, 1969, or
- (ii) the period during which Dr. J. P. Veldman is attached to the said Wanless Hospital, Miraj Medical Centre, Miraj (Maharashtra),

whichever is shorter, as the period to which the medical practice by the aforesaid doctor shall be limited.

[No. F.19-27/69-MPT.]

S.O. 2727.—Whereas by the notification of the Government of India in the late Ministry of Health No. 16-37/61-MI., dated the 31st January, 1963, the Central Government has directed that the Medical qualification, "Doctor of Medicine" awarded by the Cornell University Medical College, New York, U.S.A., shall be recognised medical qualification for the purposes of the Indian Medical Council Act, 1956 (102 of 1956);

And whereas Dr. F. C. Eggleston who possesses the said qualification is for the time being attached to the Christian Medical College and Hospital, Ludhiana for the purposes of teaching, research and charitable work;

Now, therefore, in pursuance of clause (c) of the proviso to sub-section (1) of section 14 of the said Act, the Central Government hereby specifies:—

- (i) a period of two years from the date of the publication of this order in the Official Gazette, or
- (ii) the period during which Dr. F. C. Eggleston is attached to the said Christian Medical College and Hospital, Ludhiana,

whichever is shorter, as the period to which the medical practice by the aforesaid doctor shall be limited.

[No. F.19-24/69-MPT.]

R. N. SINHA, Under Secy.

(Department of Works, Housing and Urban Development)
[Directorate of Estates]

New Delhi, the 30th June 1969

S.O. 2728.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby appoints the officer mentioned in column (1) of the table below being gazetted officer of Government, to be estate officer for the purposes of the said Act who shall exercise the powers conferred and perform the duties imposed on estate officers by or under the said Act within the local limits of his jurisdiction in respect of the public premises specified in the corresponding entry in column (2) of the said table.

THE TABLE

(1) Designation of Officer.	(2) Categories of public premises and local limits of Jurisdiction.
Estate Manager, Cochin Shipyard Project, Government of India Cochin.	Premises under the administrative control of the Ministry of Shipping and Trans- port situated within the Municipal limits of Ernakulam.

[No. F. 21012(4)/69-Pol. IV.]

T. K. BALASUBRAMANIAM,
Deputy Director of Estates and
Ex-Officio Under Secy.

MINISTRY OF SHIPPING AND TRANSPORT

(Transport Wing)

MERCHANT SHIPPING

New Delhi, the 4th July 1969

S.O. 2729.—In exercise of the powers conferred by rule 5 of the Indian Merchant Shipping (Seamen's Employment Office, Calcutta) Rules, 1954, the Central Government hereby appoints Shri N. K. Sen as a member of the Seamen's Employment Board (Foreign going) at the Port of Calcutta to represent Ship-owners *vice* Shri N. Latif, and make the following amendment in the notification of the Government of India in the Ministry of Transport and Shipping (Transport Wing) No. 15-MT(4)/67, dated the 28th September, 1967:—

In the said notification, in Serial No. 8 for the entry 'Shri N. Latif', the entry 'Shri N. K. Sen' shall be substituted.

[No. 15-MT(4)/67.]

RAM KISHORE, Under Secy.

MINISTRY OF FOREIGN TRADE & SUPPLY

New Delhi, the 1st July, 1969

S.O. 2730.—In pursuance of rule 8 of the Export of Electric Cables and Conductors (Quality Control and Inspection) Rules, 1964, the Central Government hereby appoints the persons mentioned in Col. (2) of the Table given below as the panel of experts for the purpose of hearing appeals under the said rules against the decision of the Export Inspection Agencies mentioned in the corresponding entry in Col. (1) thereof :

Provided that where a member of any of the said panels is personally interested in the subject matter of any appeal, he shall not take part in the proceedings relating to that appeal :

Authority against whose decision appeal lies Persons constituting the panel of experts to which appeal lies

(1)

(2)

I. Export Inspection Agency, Calcutta and the Indian Standards Institution, Calcutta carrying out inspection in the areas of Assam, Bihar, Nagaland, Orissa, West Bengal, Manipur, Tripura, The Andaman and Nicobar Islands and Part B Tribal areas in Assam.

1. The Director of Inspection (*Ex-officio*) Department of Supply & Technical Development, Directorate General of supplies & Disposals, 1, Ganesh Chandra Avenue, Calcutta-13.—*Chairman*
2. Shri A. K. Ganguli, Superintending Engineer (Purchase & Stores), West Bengal State Electricity Board, 13, Sooterkin Street (Top Floor), Calcutta-13.
3. Prof. H.C. Guha, In-charge of the Deptt. of Electrical Engineering, Jadavpur University, Calcutta-32.
4. Shri L.P. Shah, M/s. Electric Construction & Equipment Co. Ltd., 27/B, Camac Street, Calcutta-16.
5. The Director (*Ex-officio*), Small Industries Service Institute, 111 & 112, I.T. Road, Calcutta-35.
6. The Deputy Director (Engg.) (*Ex-officio*), Export Inspection Council, 14/1-B, Ezra Street, Calcutta-1.

II. Export Inspection Agency, Bombay and the Indian Standards Institution, Bombay carrying out inspection in the areas of Gujarat, Maharashtra, Dadra and Nagar Haveli, Goa, Daman and Diu.

1. The Director of Inspection (*Ex-officio*) Department of Supply & Technical Development, Directorate General of Supplies & Disposals, Aayakar Bhavan Annexe, New Marine Lines, Bombay-1.—*Chairman*
2. Shri M.L. Dongre, Technical Engineer, The Bombay Electricity Supply and Transport Undertaking, Best House, P.O. Box 193, Bombay-1.
3. Shri J. R. Lamech, Divisional Manager, Switch Gear Division, M/s. Larsen & Toubro Ltd., L & T House, Dougall Road, Ballard Estate, P.O. Box 278, Bombay-1.
4. Shri C. Balakrishnan, Head of the Department of Electrical Engineering, Indian Institute of Technology, P.O. I.I.T., Powai, Bombay-76.
5. The Director (*Ex-officio*), Small Industries Service Institute, Andheri Kurla Road, Bombay.
6. The Joint Director (*Ex-officio*), Export Inspection Council, 11/21, Mathew Road, Mani Mahal, Bombay-4.—*Convener*

(1)

(2)

III. Export Inspection Agency, Delhi and the Indian Standards Institution, New Delhi carrying out inspection in the areas of Haryana, Jammu and Kashmir, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, Delhi, Chand garh and Himachal Pradesh.

1. The Director of Inspection (*Ex-officio*), Northern Inspection Circle, Deptt. of Supply & Technical Development, Directorate General of Supplies & Disposals, Jamnagar House, Block-13, New Delhi. —*Chairman*
2. Shri R. Seth, Chief Engineer, Delhi Electric Supply Undertaking, Link House, Bahadur Shah Zafar Marg, New Delhi.
3. Shri S. N. Singh, Chief Engineer (Electrical) Bharat Heavy Electricals Ltd., Heavy Electrical Equipment Plant, Hardwar (U.P.)
4. Shri G. D. Joglekar, Scientist-in-Charge Division of Planning & Liaison, National Physical Laboratory, Hillside Road, New Delhi-12.
5. Shri K. N. Dick, Sales Manager, M/s. American Universal Electric (India) Ltd. 40-F, Connaught Place, New Delhi-4.
6. The Deputy Director (*Ex-officio*), Export Inspection Council, 6B/9, Northern Extension Area, Rajinder Nagar, New Delhi-4. —*Convener*

IV. Export Inspection Agency, Madras/ Cochin and the Indian Standards Institution, Madras carrying out inspection in the areas of Andhra Pradesh, Madras, Pondicherry, Kerala, Mysore, the Laccadive, Minicoy and Amindivi Islands.

1. The Director of Inspection (*Ex-officio*) Madras Inspection Circle, Department of Supply & Technical Development, Directorate General of Supplies & Disposals, 36, Haddows Road, Madras-6. —*Chairman*
2. Shri N. Ramachandran, Design Engineer (Electrical), P.S.G. Industrial Institute, Coimbatore-4.
3. Shri A. R. Narayana Rao, Managing Director, Hivelm Industries Pvt. Ltd., 96 A, Mount Road, Madras-18.
4. Dr. P. Venkata Rao, Head of the Electrical Engg. Deptt., Indian Institute of Technology, Madras, I.S.T. P.O., Madras-36.
5. Shri M. S. Rajagopalan, Manager, Relay & Control Panel Division, The English Electric Co. of India Ltd., P.B. 2392, Madras-27.
6. Prof. V. N. Sujeeer, Professor of Electrical Engineering, College of Engineering Guindy, Madras-25.
7. Shri R. Venkataraman, General Manager Easun Engineering Co. Ltd., 5-7, Second Line Beach, Madras-1.
8. The Deputy Director (*Ex-officio*), Export Inspection Agency, Sire Mansion, 123 Mount Road, Madras-6. —*Convener*

[No. F. 60 (38)/67-Exp. Insp.]

M. K. B. BHATNAGAR,

Dy. Director (Export promotion).

(Department of Foreign Trade)*New Delhi, the 3rd July 1969*

S.O. 2731.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following order further to amend the Cotton Textiles (Control) Order, 1948, namely:—

1. (i) This Order may be called the Cotton Textiles (Control) (Second Amendment) Order, 1969.

(ii) It shall come into force at once.

2. In the Cotton Textiles (Control) Order, 1948, in clause 34, for the words "authorise any officer", the words "authorise any officer of the Central Government or the State Government", shall be inserted.

[No. F. 4/23/69-TEX(C).]

K. SRINIVASAN, Dy. Secy.

(Office of the Chief Controller of Imports & Exports)**ORDER***New Delhi, the 30th June 1969*

S.O. 2732.—M/s. Ronuk Industries Limited, Bombay-18 were granted licence No. P/RM/2155334 dated 7th December 1966 from G.C.A. for the import of Raw Materials valued Rs. 2,06,500/-. They have requested for the issue of duplicate Exchange copy of the said licence, on the ground that the original copy of the licence has been lost/misplaced after utilising Rs. 2,03,194/. The licence has been registered with Collector of Customs, Bombay.

2. In support of their contention, the applicant have filed an affidavit. The undersigned is satisfied that the original Exchange copy of the licence No. P/RM/2155334 dated 7th December 1966 has been lost and directs that duplicate copy of the licence should be issued to them. The original Exchange copy is cancelled.

3. The duplicate Exchange copy of the licence is being issued separately.

[No. Ch/3-4(23)/A.M. 67/R.M. 3.]

G. S. SHARMA,
Dy. Chief Controller of Imports & Exports.

(Office of the Chief Controller of Imports & Exports)**ORDER***New Delhi, the 30th June 1969*

S.O. 2733.—Controller of Supplies National Mineral Development Corporation Limited N.I.T. Faridabad was granted an Import Licence No. G/CG/2026825/S/JC/24/C/H/23/CG.II dated 14th November 1966 for Rs. 90,710 (Ninety thousand seven hundred and ten only). They have applied for the issue of duplicate copy for Customs purposes copies of the said licence on the ground that the original Customs copy have been lost/misplaced. It is further stated that the Customs Copy was not utilised.

2. In support of this contention, the applicant has filed an affidavit. I am accordingly satisfied that the original Customs copies of the said licence have been lost. Therefore in exercise of the powers conferred under Sub-clause 9 (cc) of the Imports (Control) Order 1955 dated 7th December 1955 as amended, the said original licence, No. G/CG/2026825/S/JC/24/C/H/23/CG. II dated 14th November 1966 is hereby cancelled.

3. A duplicate (Customs purposes copy) of the said licence is being issued separately to the licensee.

[No. CG. II/44(7)/86-87.]

P. C. VERMA,
Dy. Chief Controller of Imports & Exports
for Chief Controller of Imports & Exports.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 28th June 1969

S.O. 2734.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Modern Binding Works, Udyog Bhavan, 7/C, Pitamber Lane, Chunabhatti Mahim, Bombay-16 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provision of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of December, 1968.

[No. 8/63/69/PF-II(i).]

S.O. 2735.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st December, 1968 section 6 of the said Act shall in its application to M/s. Modern Binding Works, Udyog Bhavan, 7/C, Pitamber Lane, Chunabhatti Mahim, Bombay-16 be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/63/69/PF-II(ii).]

S.O. 2736.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Shri M. M. Tiwari to be an Inspector for the whole of the State of Bihar for the purposes of the said Act and of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control of the Central Government, and in relation to any establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry.

[No. 21(9)/69-PF.I.]

S.O. 2737.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Harit Synthetic Fabrics Private Limited, 52/54, Nakhoda Street, Pudhonia Bombay-3 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of November, 1968.

[No. 8/60/69-PF-II(i).]

S.O. 2738.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 30th November 1968 section 6 of the said Act shall in its application to M/s. Harit Synthetic Fabrics Private Limited, 52/54, Nakhoda Street Pudhonia, Bombay-3, be subject to the modification that for the words "six and a quarter per cent," the words "eight per cent" were substituted.

[No. 8/60/69-PF-II(ii).]

S.O. 2739.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Product Finishers Private Limited, Shed No. F. 402, Cadell Road, Bombay-28, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of June, 1968.

[No. 8/168/68-PF-II(i).]

S.O. 2740.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 30th June, 1968 section 6 of the said Act shall in its application to M/s. Product Finishers Private Limited, Shed No. F. 402, Cadell Road, Bombay-28 be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent", were substituted.

[No. 8/168/68-PF-II(H).]

S. O. 2741.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factories specified in column (4) of the Table below in 'sparse areas' specified in the corresponding entries in column 3 of the said Table in the State of West Bengal, hereby exempts the said factories from payment of the employers' special contribution leviable under chapter VA of the said Act, for a period of one year from the date of issue of this notification or until the enforcement of the provisions of chapter V of the Act in those areas, whichever is earlier :—

TABLE

Sl. No.	Name of District	Name of Area	Name of the factory
(1)	(2)	(3)	(4)
1.	Malda	Khejuriaghat	(1) Messrs. Hindustan Construction Co., Limited. (2) Messrs. Temporary Auto Repair Shop. (3) Messrs. Temporary Crushing Screening and Batching Plant. (4) Messrs. Temporary, Workshop.
	Malda		Messrs. Kalindri Factory.

[No. F. 6 (38)/68-HI.]

S.O. 2742.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs West Bengal Lorry Syndicate, 6/3, Madan Street, Calcutta-13 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the thirty-first day of May, 1969

[No. 8/62/69-PF-II.]

S.O. 2743.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st October, 1968, section 6 of the said Act, shall, in its application to Messrs Keen Entrepreneurs, Tower House, M. G. Road, Post Box 1190,

Ernakulam, Cochin-11, be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/181/68-PF-II(ii).]

New Delhi, the 2nd July 1969

S.O. 2744.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as the National Ice Cold Storage Company, 19, Arab Lane, Bombay-8 have agreed that the provisions of the Employees Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of June, 1968.

[No. 8(40)/69/PF-II.]

S.O. 2745.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), and in continuation of the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation, (Department of Labour and Employment), No. S.O. 2298, dated the 22nd June, 1968, the Central Government, having regard to the location of the factory, namely the Government Photo Litho Press, Roorkee, in an implemented area, hereby exempts the said factory from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period upto and inclusive of the 14th June, 1970.

[No. F. 6(54)/68-HI.]

S.O. 2746.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Shreekrishna Shreeniwas, Das Chamber, 25 Dalal Street, Fort, Bombay have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952) should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the Thirty-first day of December, 1967.

[No. 8/43/69-PF-II(i).]

S.O. 2747.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st December 1967 section 6 of the said Act shall in its application to M/s. Shreekrishna Shreeniwas, Das Chambers, 25, Dalal Street, Fort, Bombay be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/43/69/PF-II(ii).]

S.O. 2748.—In exercise of the powers conferred by section 75F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factory in a sparse area in the State of Kerala, hereby exempts Messrs Sashta Industries, Wadakkawcherry, from the payment of the employers' special contribution leviable under Chapter VA of the said Act for a period of one year from the date of publication of this notification or until the enforcement of the provisions of Chapter V of that Act in that area whichever is earlier, and makes the following further amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1451, dated the 29th April, 1966, namely:

In the Schedule to the said notification in serial No. 6, against the entry "Wadakkawcherry" in column 3, item (ii), in column 4 shall be omitted.

[No. F. 6(104)/68-HI.]

S.O. 2749.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Sri Lakshmi Silk Works, T.S. No. 427/1, Palar Anaicut Road, Wallajahpet; North Arcot District, Tamilnadu have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st May, 1969.

[No. 8/49/69-PF-II.]

S.O. 2750.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs International Tobacco Company, Limited, Guldhar, Ghaziabad have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of May, 1969.

[No. 8/129/68-PF-II.]

S.O. 2751.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Tobu Enterprises Private Limited 8/29, Industrial Area, Kirti Nagar, New Delhi-15 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of October, 1968.

[No. 8/51/69/PF-II(i).]

S.O. 2750.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that with effect from the 31st October, 1968, section 6 of the said Act shall in its application to M/s. Tobu Enterprises Private Limited, 8/29, Industrial Area, Kirti Nagar, New Delhi-15 be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/51/69-PF-II(ii).]

S.O. 2753.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Indian Metals and Ferro Alloys Limited, P.O. Therubali, District Koraput, Orissa, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the Thirtieth day of November, 1968.

[No. 8/16/69-PF-II.]

S.O. 2754.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Annamalai Engineering Manufacturers, No. 157, Vengikkari Village Vellore Tiruvannamalai Trunk Road, Tiruvannamalai, Tamilnadu, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952); should be

(Department of Petroleum and Chemicals)

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment from the 31st May, 1969.

[No. 8/46/69-PF.II.]

S.O. 2755.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Popular Rubber Works Private Limited, Netaji Subhas Road, Calcutta-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st May, 1969.

[No. 8/56/69-PF.II.]

S.O. 2756.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Thacker and Company, Das Chamber, 25, Dalal Street, Bombay-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of November, 1968.

[No. 8/42/69/PF.II(i).]

S.O. 2757.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter hereby specifies that with effect from the 30th November, 1968, section 6 of the said Act shall in its application to Messrs Thacker and Company, Das Chamber, 25, Dalal Street Bombay-1, be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/42/69-PF.II(ii).]

S.O. 2758.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Sri Padmavathy Silk Throwing Factory, 14/1, T. Ramaswamy Mudalliar Street, Wallajahpet, North Arcot District, Tamilnadu, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st May, 1969

[No. 8/50/69-PF.II.]

S.O. 2759.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Sri Ramachandra Silk Throwing Factory, T. No. 427, Palar Anaicut Road, Wallajahpet, Tamilnadu, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st May 1969.

[No. 8/47/69-PF.II.]

S.O. 2760.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Chowgule Engineering Company Private Limited, Chowgule House, Post Box No. 6, Mormugao Harbour, Goa have agreed that the provisions of the

Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of October, 1968.

[No. 8/38/69/PF-II.]

S.O. 2761.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Overseas Merchandise Inspection Company Limited, 17, Chittaranjan Avenue, Calcutta-13 (including branches) have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the thirty-first day of May, 1969.

[No. 8/64/69/PF-II.]

S.O. 2762.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Vaidya Process Studio, Madhani Estate, 2nd Floor, R. No. 201, Dadar, Bombay-28, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty-first day of December, 1968.

[No. 8/56/69-PF-II.]

New Delhi, the 3rd July 1969

S.O. 2763.—In pursuance of the provisions of clause (c) of sub-section (3) of section 17 of the Employees' Provident Funds Act, 1952 (19 of 1952), and in supersession of the notification of the Government of India in the late Ministry of Labour No. S.R.O. 1642, dated the 25th August, 1953, the Central Government hereby specifies the period of three months from the date on which the information of the re-employment of an employee in another establishment to which the said Act applies is received, as the time within which the amount of accumulations to the credit of the employee in the provident fund of the establishment left by him, shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the fund established under the Scheme applicable to the establishment.

[No. 11(73)/67-PF-II.]

S.O. 2764.—In exercise of the powers conferred by sub-paragraph (1) of paragraph 22 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby appoints the Central Provident Fund Commissioner, Employees' Provident Fund, as the Secretary to the Central Board of Trustees set up under the notification of the Government of India in the late Department of Social Security No. S.O. 1156, dated the 1st April, 1965.

[No. 12/2/68-PF-II.]

S.O. 2765.—In pursuance of clause (a), of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby appoints the Secretary to the Government of Tamil Nadu, Labour Department, as the Chairman of the Regional Committee set up for the State of Tamil Nadu

and makes the following further amendment in the notification of the Government of India in the late Ministry of Labour No. S.R.O. 3381, dated the 2nd November, 1954, namely :

In the said notification, against item 1, for the existing entry in the first column, the following entry shall be substituted, namely:—

“The Secretary to the Government of Tamil Nadu, Labour Department, Madras.”

[No. 12(8)/64-PF.II.]

New Delhi, the 4th July 1969

S.O. 2766.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), and in continuation of the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2299, dated the 24th June, 1968, the Central Government, having regard to the location of the Government Text Book Press, Mysore, in an implemented area, hereby exempts the said press from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period of one year upto and inclusive of the 28th June, 1970.

[No. F. 6(47)/69-HI.]

DALJIT SINGH, Under Secy.

श्रम नियोजन और पुनर्वासि मंत्रालय

(श्रम और नियोजन विभाग)

नई दिल्ली, 28 जून, 1969

का० आ० 2767.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स माडन बाईर्नि जर्से, उद्योग भवन, 7/सी पीताम्बर लेन, चूना भट्टी महिम, मुम्बई-16 नामक स्थापन से सम्बद्ध निरोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, आ० उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद् द्वारा लागू करती है।

यह अधिनियम 1968 के दिसम्बर के पच्चीसवें दिन को प्रवृत्त हुई समी जाएगी।

[पं० 63/68/म० नि०-2(1)]

का० आ० 2768.—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार श्री एम० एम० तिवारी को उक्त अधिनियम और तदधीन विरचित किसी स्कोम के प्रयोजनों के लिए सम्पूर्ण बिहार राज्य के लिए केन्द्रीय सरकार के पक्ष या उनके नियन्त्रणाधीन किसी स्थापन के सम्बन्ध में और किसी रेल कम्पनी, महापत्तन, खान या तेल क्षेत्र या नियन्त्रित उद्योग से सम्बद्ध किसी स्थापन के सम्बन्ध में एतद्वारा निरोधक नियुक्त करती है।

[सं० 21(9)/69-म० नि०(1)]

का० आ० 2769.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स इति सिनथेटिक फैब्रिक्स प्राइवेट लिमिटेड, 52/54 नवोदा स्टीट, पाइघोनी, मुम्बई-3 नामक स्थापन से सम्बद्ध निरोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 का उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद् द्वारा लागू करती है।

यह अधिसूचना 1968 के नवम्बर के तीसरे दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/60/69/भ० नि०-2(i)]

का० प्रा० 2770.—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद् द्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स हरित सितयोटिक फैब्रिक्स प्राइवेट लिमिटेड, 52/54, नखोदा स्ट्रीट, पाइधोनी, मुम्बई-3 को लागू होने के सम्बन्ध में 30 नवम्बर, 1968 से इस उपान्तरण के अन्वये होगी कि “सवा छह प्रतिशत” शब्दों के लिए “आठ प्रतिशत” शब्द प्रतिस्थापित किए जाएं।

[सं० 8/60/69/भ० नि०-2(ii)]

का० प्रा० 2771.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स प्रोडक्ट फिनिशर्स प्राइवेट लिमिटेड, शेड नं० एफ 402, केडले रोड, मुम्बई-28 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत होगई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिएं :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद् द्वारा लागू करती है।

यह अधिसूचना 1968 के जून के तीसरे दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/68/भ० नि०-2(i)]

का० प्रा० 2772.—कर्मचारी भविष्यनिधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद् द्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स प्रोडक्ट फिनिशर्स प्राइवेट लि०, शेड नं० एफ-402, केडल रोड, मुम्बई-28 को लागू होने के सम्बन्ध में 30 जून, 1968 से इस उपान्तरण के अन्वये होगी कि “सवा छह प्रतिशत” शब्दों के लिए “आठ प्रतिशत” शब्द प्रतिस्थापित किए जाएं।

[सं० 8/168/68-भ० नि०-2(ii)]

का० प्रा० 2773.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स वेस्ट बंगाल लारी सिंडीकेट, 6/3 मदन स्ट्रीट, कलकत्ता-13 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत होगई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिएं :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद् द्वारा लागू करती है।

यह अधिसूचना 1969 की मई के एकतीसरे दिन को प्रवृत्त होगी।

[सं० 8/62/69-भ० नि०-2]

का० आ० 2774—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद्द्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स कीन एन्टरप्रेन्यर्स, टावर हाउस, एम० जी० रोड, पो० बा० 1190, एरनाकुलम, कोचीन-11 को लागू होने के सम्बन्ध में 31 अक्टूबर, 1968 से इस उपान्तरण के अध्यधीन होगी कि “सवा छह प्रतिशत” शब्दों के लिए “आठ प्रतिशत” शब्द प्रतिस्थापित किए जाएं।

[सं० 8/181/68-भ० नि० (ii)]

का० आ० 2775—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद्द्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स माडर्न वाइनिंग वर्क्स, योग भवन, 7/सी, पीताम्बर लेन, चूना भट्टी महिम, मुम्बई-16 को लागू होने के सम्बन्ध में 31 दिसम्बर, 1968 से इस उपान्तरण के अध्यधीन होगी कि “सवा छह प्रतिशत” शब्दों के लिए “आठ प्रतिशत” शब्द प्रतिस्थापित किए जाएं।

[सं० 8/68/69-भ० नि०-2(i)]

नई दिल्ली, 2 जुलाई 19 69

का० आ० 2776—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि नेशनल ग्राइस एण्ड कोरुड स्टोरेज कम्पनी 19, अरब लेन, मुम्बई-8 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिएं;

अतः, अब उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है।

यह अधिसूचना 1968 के जून के तीसवें दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/40/69/भ० नि०-2]

का० आ० 2777 :—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स टोबू एन्टरप्राइजेज, प्राइवेट लिमिटेड, 8/29, इण्डस्ट्रियल एरिया, कीर्ति नगर, नई दिल्ली-15 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिएं :

अतः, अब उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है।

यह अधिसूचना 1968 के अक्टूबर के एकतीसवें दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/51/69-भ० नि०-2(i)]

का० आ० 2778 :—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद्द्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6,

मैसर्स टोब एन्टरप्राइजेज प्राइवेट लिमिटेड, 8/29 इस्ट्रियल एरिया, कीर्ति नगर, नई दिल्ली-15 को लागू होने के संबंध में 31 अक्टूबर, 1968 से इस उपान्तरण के अन्वये होगी कि "सवा छह प्रतिशत" शब्दों के लिए "आठ प्रतिशत" शब्द प्रतिस्थापित किए जाएं।

[सं० 8/51/69-भ० नि०-2(ii)]

का० प्रा० 2779:—यतः केन्द्रीय सरकार को यह प्रनीत होता है कि मैसर्स श्री कृष्ण श्रीनिवास-दास चैम्बर, 25 दलाल स्ट्रीट, फोर्ट, मुम्बई नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए ;

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्वारा लागू करती है।

यह अधिसूचना 1967 दिसम्बर के एकतीसवें दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/43/69-भ० नि०-2(i)]

का० प्रा० 2780:—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स श्रीकृष्ण श्रीनिवास, दास चैम्बर, 25 दलाल स्ट्रीट, फोर्ट, मुम्बई को लागू होने के संबंध में 31 दिसम्बर, 1967 से इस उपान्तरण के अन्वये होगी कि "सवा छह प्रतिशत" शब्दों के लिए "आठ प्रतिशत" शब्द प्रतिस्थापित किए जाएं।

[सं० 8/43/69-भ० नि०-2(ii)]

का० प्रा० 2781:—यतः केन्द्रीय सरकार को यह प्रनीत होता है कि मैसर्स श्री लक्ष्मी लिफ्टवर्क, टी० एस० नं० 427/1, पालर प्लानेट रोड, बल्लाजहपेट, नोर्थ अरकाट जिला, तमिलनाडु नामक स्थापना से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को 31 मार्च, 1969 से एतद्वारा लागू करती है।

[सं० 8/49/6 -भ० नि०-2]

का० प्रा० 2782:—यतः केन्द्रीय सरकार को यह प्रनीत होता है कि मैसर्स इन्टरनेशनल टोबैको कंपनी लिमिटेड, गुलधर, गाजियाबाद नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्वारा लागू करती है।

यह अधिसूचना 1969 की मई के एकतीसवें दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/29/68-भ० नि०-2]

का० प्रा० 2783 :-यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मेसर्स इण्डियन मेटल्स एन्ड फैरो एलाइज लिमिटेड, पो० ऑ० थेरुवाली, कोरापूत, उड़ीसा नामक स्थान से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए ;

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है ।

यह अधिसूचना 1968 के नवम्बर के तीसवें दिन को प्रवृत्त हुई समझी जाएगी ।

[सं० 8/16/69-भ०नि०-2]

का० प्रा० 2784 :-यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मेसर्स एग्रामलाई इंजीनियरिंग मैन्यूफैक्चर्स, नं० 157, बेनगीक्कारी विलेज, बेलोर, तिरुवन्नामलाई ट्रंक रोड, तिरु-वन्नामलाई, तामिलनाडु नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को 31 मई, 1969 से एतद्द्वारा लागू करती है ।

[सं० 8/46/69-भ०नि०-2]

का० प्रा० 2785 :-यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मेसर्स पापुलर रबड़ वर्क्स प्राइवेट लिमिटेड, नेताजी सुभाष रोड, कलकत्ता-1 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा 31 मई, 1969 से लागू करती है ।

[सं० 8/55/69-भ०नि०-2]

का० प्रा० 2786 :-यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मेसर्स टैकर एन्ड कम्पनी, दास चेम्बर, 25 दलाल स्ट्रीट, मुम्बई-1 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है ।

यह अधिसूचना 1968 के नवम्बर के तीसवें दिन को प्रवृत्त हुई समझी जाएगी ।

[सं० 8/42/69-भ०नि०-2]

का० आ० 2787—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स श्री पद्मावती सिल्क थ्रोईंग फैक्टरी, 1411, टी० रामास्वामी मुदालियर स्ट्रीट, वल्लाजहपेट, नाथ अरकाट जिला, तमिलनाडू नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को 31 मई, 1969 से एतद्द्वारा लागू करती है ।

[सं० 8/50/69-भ० नि०-2]

का० आ० 2788—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स श्री रामचन्द्र, सिल्क थ्रोईंग फैक्टरी, टी० न० 427, पलार अनाईक्कूट रोड, वल्लाजहपेट, तमिलनाडू, नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को 31 मई, 1969 से एतद्द्वारा लागू करती है ।

[सं० 8/47/69-भ० नि०-2]

का० आ० 2789—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स चउगुले इंजी-नियरिंग कम्पनी प्राइवट लिमिटेड, चउगुले हाउस, पोस्ट बाक्स नं० 6, मोरभूगाव हारबर, गोआ, नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है ।

यह अधिसूचना 1968 के अक्तूबर के एकतीसवें दिन को प्रवृत्त हुई समझी जाएगी ।

[सं० 8/38/69-भ० नि०-2]

का० आ० 2790—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स ओवरसीज मरकेन्डाइज इन्स्पेक्शन कम्पनी लिमिटेड, 17-चिन्नरंजन एवेन्यू, कलकत्ता-13 (शाखाएं सम्मिलित हैं) नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है ।

यह अधिसूचना 1969 को मई के एकतीसवें दिन को प्रवृत्त होगी ।

[सं० 8/64/69-भ० नि०-2]

का० आ० 2791:—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद्द्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स ठैकर एण्ड कम्पनी, दास चैम्बर, 25 दलाल स्ट्रीट, बम्बई-1 को लागू होने के संबंध में 30 नवम्बर, 1968 से इस उपान्तरण के अधीन होगी कि “सबो छह प्रतिशत” शब्दों के लिए “आठ प्रतिशत” शब्द प्रतिस्थापित किए जाएं।

[सं० 42/69-भ० नि०-2]

का० आ० 2792:—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स बैथ प्रोसेस स्टूडियो, मधानी एस्टेट, सैकण्ड फ्लोर, रूम नं० 201, दादर बम्बई-28 नामक स्थापन सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है।

यह अधिसूचना 1968 के दिसम्बर के एकतीसवें दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/56/69-भ० नि०-2]

नई दिल्ली, 3 जुलाई, 1969

का० आ० 2793:—कर्मचारी भविष्य निधि अधिनियम 1952 (1952 का 19) की धारा 17 की उपधारा 3 के खंड (ग) के उपबंधों के अनुसरण में, तथा भारत सरकार के भूतपूर्व श्रम मंत्रालय की अधिसूचना संख्या का० नि० आ० 1642, तारीख 25 अगस्त, 1953 को अतिष्ठित करते हुए, केन्द्रीय सरकार उस तारीख से, जिसको किसी कर्मचारी की किसी ऐसे अन्य स्थापन में जिसे उक्त अधिनियम लागू होता है पुनर्नियोजन की सूचना प्राप्त होनी है, तीन मास की कालावधि को एतद्द्वारा उस समय के रूप में विनिर्दिष्ट करती है, जिसके भीतर उस स्थापन की, जिसे उस कर्मचारी ने छोड़ा है, भविष्य निधि में उस कर्मचारी के लेख में जमा सभी रकम, उस स्थापन की, जिसमें उसका पुनर्नियोजन हुआ है, भविष्य निधि में या, जसी भी स्थिति हो, उस स्थापन को लागू स्कीम के अधीन स्थापन निधि में उसके लेख में अन्तर्गत कर दी जायेगी।

[सं० 11/73/67-पी० एफ०-2]

का० आ० 2794:—कर्मचारी भविष्य निधि स्कीम, 1952 के पैरा 4 के उप-पैरा (1) के खंड (क) के अनुसरण में केन्द्रीय सरकार तमिलनाडु सरकार के श्रम विभाग के सचिव को उस प्रादेशिक समिति का एतद्द्वारा अध्यक्ष नियुक्त करती है जो तमिलनाडु राज्य के लिए स्थापित की गई है और भारत सरकार के भूतपूर्व श्रम मंत्रालय की अधिसूचना संख्या सा० का० नि० 3381, तारीख 2 नवम्बर, 1954 में निम्नलिखित अतिरिक्त संशोधन करनी है ;

उक्त अधिसूचना में मद संख्या 1 के सामने, प्रथम स्तम्भ में वर्तमान प्रविष्टि के लिए निम्नलिखित प्रतिस्थापित किया जायगा, अर्थात्—

“सचिव, तमिलनाडु सरकार, श्रम विभाग भद्रास”

[सं० 12(8)/54-भ० नि०-2]

दलजीत सिंह, अवर सचिव ;

(Department of Labour and Employment)*New Delhi, the 1st July 1969*

S.O. 2795.—Whereas by the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 146, dated the 4th January, 1969, the Central Government had declared the coal industry to be a public utility service for the purposes of the Industrial Disputes Act, 1947 (14 of 1947), for a further period of six months from the 8th January, 1969;

And, whereas the Central Government is of the opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a further period of six months from the 8th July, 1969.

[No. F. 1/39/69-LRI.]

New Delhi, the 2nd July 1969

S.O. 2796.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, New Delhi, in the industrial dispute between the employers in relation to the Life Insurance Corporation of India and their workmen, which was received by the Central Government on the 24th June, 1969.

**BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL,
NEW DELHI**

REFERENCE NO. NIT-1 OF 1969

In the matter of industrial dispute between the Life Insurance Corporation of India, 'Yogakshema', Madame Cama Road, Bombay, and its employees as represented by:—

- (1) All India Insurance Employees' Association, Calcutta.
- (2) All India National Life Insurance Employees' Federation, Bombay.
- (3) All India Life Insurance Employees' Association, Calcutta.
- (4) L. I. C. Higher Grade Assistants' Association, Calcutta.

PRESENT:

The Hon'ble Shri D. S. Dave, retired Chief Justice, Rajasthan High Court, Presiding Officer.

APPEARANCES:

For the Employer: Shri N. V. Phadke, Advocate, with Shri S. J. Banaji, Solicitor, Shri Bhagwandas Hiralal Bhukhanwala, Deputy Secretary, L.I.C., and Shri Anant Waman Dharwadkar, Assistant Secretary (Personnel), L.I.C.

For the workmen: Shri M. K. Ramamurthi, Advocate, with Shri Madan Mohan, Advocate, Shri H. L. Dutta, Advocate (for some time), Shri Saroj Chaudhari, Shri S. N. Bhowmik, and Shri P. N. Nag, on behalf of All India Insurance Employees' Association.

Shri Shantilal H. Shah, M.P., and later, Shri H. L. Dutta, Advocate, with, Shri N. Chakravorty, and T. N. Krishnan, on behalf of All India National Life Insurance Employees' Federation.

Shri D. L. Sengupta, Advocate, and for sometime, Shri S. K. Nandi, Advocate, with, Shri P. K. Bose, on behalf of All India Life Insurance Employees' Association.

Shri D. L. Sengupta, Advocate, and for sometime, Shri S. K. Nandi, Advocate, with, Shri N. D. Khattar, and Shri A. N. Kapur, on behalf of L.I.C. Higher Grade Assistants' Association.

Application No. Misc./NIT/3/69 in Reference No. NIT-1 of 1969, of All India Life Insurance Employees' Association.

Application No. Misc. NIT/4/69 in Reference No. NIT-1 of 1969, of All India Insurance Employees' Association.

Application No. Misc./NIT/5/69 in Reference No. NIT-1 of 1969 of L.I.C. Higher Grade Assistants' Association.

Application No. Misc. NIT/9/69 in Reference No. NIT-1 of 1969 of All India National Life Insurance Employees' Federation.

AWARD

These are four applications by four different Associations for grant of interim relief by way of suitable increment in the emoluments of the Class III and Class IV employees of the Life Insurance Corporation of India which will be referred to hereafter as "the Corporation".

Before considering these applications it would be proper to set out briefly the genesis of the main dispute and its salient features in order to appreciate the contentions of the parties in their true perspective.

The management of the life insurance business in India was taken over by the Central Government pending nationalisation thereof, under the Life Insurance (Emergency Provisions) Ordinance, 1956 (No. 1 of 1956) which was promulgated on the 19th January, 1956. The Ordinance was repealed and replaced by the Life Insurance (Emergency Provision) Act, 1956 (No. 9 of 1956). This was followed by a comprehensive legislation nationalising life insurance business by the Life Insurance Corporation Act, 1956 (31 of 1956) which hereinafter will be referred to as "the Act". It came into force on the 1st July 1956. The Corporation started functioning from the 1st September, 1956. By virtue of the provisions of section 7 of the Act, all the assets and liabilities appertaining to the controlled business of all the insurers stood transferred to and vested in the Corporation. There were as many as 245 insurers who were dealing with life insurance business before that date. With the transfer of the business these insurers, the services of their employees were also transferred to the Corporation under section 11 [sub-section (1)] of the Act. It was provided by this section that "every whole-time employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day, shall, on and from the appointed day, become an employee of the Corporation and shall hold his office therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the appointed day if this Act had not been passed, and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms and conditions are duly altered by the Corporation". A proviso was, however, added to the effect that "nothing contained in this sub-section shall apply to any such employee who has, by notice in writing, given to the Central Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation". The terms and conditions of service prevailing with the various insurers were not uniform. They varied from place to place and according to the standing of the insurer and his business. With the taking over of the services of the employees of the erstwhile insurers by the Corporation, the necessity of providing uniform terms and conditions of service was felt. Sub-section (2) of section 11 of the Act had empowered the Central Government to bring about uniformity in the scales of remuneration and other terms and conditions of service applicable to employees of insurers whose business vested in the Corporation. In exercise of the powers conferred by this section the Central Government, therefore, passed an Order dated the 1st June 1957, called the Life Insurance Corporation (Alteration of Remuneration and other Terms and Conditions of Service of Employees) Order 1957, popularly known as 'Standardization Order'. It was brought into force with retrospective effect from the 1st September 1956. With effect from the said date the terms and conditions of employment of Class III and Class IV employees of the Corporation, with whom only we are concerned in this case, came to be governed by the Standardization Order. It did not apply to those employees who elected not to be governed by the scales of pay and dearness allowance set out in the Annexure of that Order. The Standardization Order applied only to transferred employees.

Section 49 of the Act empowered the Corporation to make Regulations with the previous approval of the Central Government for certain purposes mentioned therein. With a view to define the terms and conditions of service of the staff of the Corporation, the Corporation, therefore, framed its (Staff) Regulations with

the previous approval of the Central Government in January 1957. They came into force retrospectively from the 1st September 1956. These Regulations were repealed by the Life Insurance Corporation of India (Start) Regulations, 1960, which came into force from the 1st July 1960. These Regulations applied to all the whole-time employees of the Corporation including the transferred employees. The scales of pay applicable to the workmen involved in the dispute are laid down in Schedule II of these Regulations.

It may be noted here that when the Central Government, following the recommendations of the Second Pay Commission, granted with effect from the 1st July 1957 an interim increase in dearness allowance of Rs. 5/- p.m. to its employees drawing basic salary below Rs. 250/-, the Corporation also increased the dearness allowance by Rs. 5/- to its employees in basic pay ranges between Rs. 50/- and Rs. 250/-. This revision was made with effect from the 1st January 1953.

In 1960, the All India Insurance Employees' Association and the All India Life Insurance Employees' Association, who are parties to this dispute, presented their Charters of Demands to the Corporation for revision of pay scales. On the 6th March 1961, the Corporation entered into an agreement with these two Associations for payment of an *ad-hoc* increase in dearness allowance at the rate of Rs. 15/- per month to all Class III and Class IV employees with effect from the 1st April 1960. In 1962, further negotiations took place between the Corporation and the said two Associations and they culminated in the settlement which was signed on the 29th January 1963. Among other things, this settlement provided for improved pay scales and grant of dearness allowance linked with the cost of living index. It would be proper to reproduce here the relevant terms of settlement relating to dearness allowance to appreciate the arguments which have been advanced on this point and which will be discussed later on the appropriate stage.

"III Dearness Allowance:

The present D. A., and *Ad hoc* D. A., shall be replaced as under:—

"With effect from 1st January, 1962, the D.A. corresponding to the cost of living index 126 (1949=100), shall be 26 per cent of the basic salary for Class IV employees and 19½% of the basic salary for Class III employees.

"In the manner provided hereinafter, the D.A. shall be linked to the All India Working Class Consumer Price Index taking 1949=100. The final index figures as published in the Indian Labour Journal shall be the index figures which will be taken for the purpose of calculation of Dearness Allowance. Neutralisation of the rise in the cost of living shall be 100 per cent in the case of Class IV employees and 75 per cent in the case of Class III employees.

"For every 10 points rise or fall taken on an average during a continuous period of 12 months, the D.A. shall, with effect from the 1st of the month following such period of 12 months, stand automatically increased or decreased as the case may be by 10 per cent of the basic salary in the case of Class IV employees and by 7½ per cent of the basic salary in the case of Class III employees.

NOTES: (1) Basic salary shall include Special Pay where the same is paid.

(2) "Additional D.A." in those cases where the same is paid at present shall continue to be paid in addition to the D.A. as set out above."

It would appear from this settlement that while new scales of salaries were constructed after merging a substantial portion of the dearness allowance then admissible to the employees, dearness allowance was linked for the first time with the cost of living index with the year 1949-100 on a 10 point basis. The rate of neutralisation of the rise in the cost of living adopted was 100% in the case of Class IV employees and 75% in the case of Class III employees. Sometime after this settlement, a demand was raised by the employees for an increase in dearness allowance on the ground that the compilation of the working class consumer price index, on the basis of which the dearness allowance was granted under the settlement of 1963, was faulty and did not disclose the correct figures. Negotiations then took place towards the end of 1964 between the Corporation and the All India Insurance Employees' Association and a settlement was reached on the 29th January, 1965 providing for, among other things, a temporary increase in the dearness allowance at the rate of 8% of basic salary in the case of Class IV employees and 6% of basic salary in the case of Class III employees. According to the Corporation, the All India Life Insurance Employees' Association did not

become a party to this settlement although it had participated in the negotiations which culminated in the settlement. The settlement of 1963 was to remain in force for five years from the 1st January, 1962, that is up to the 31st December, 1966. The settlement of 1965 was to remain in force for two years from the 1st January, 1965. In other words, both the settlements were to continue upto the 31st December, 1966.

The terms of the settlement of 1965 regarding temporary increase in dearness allowance were as follows:—

"7. Temporary increase in Dearness Allowance:—With effect from 1st August, 1964, an additional amount of temporary Dearness Allowance equal to 8 per cent of their basic salary in respect of those Class IV employees who are governed under the scales of pay, D.A. and other Allowances (wherever payable) in Part A of Schedule II of (Staff) Regulations, 1960, and equal to 6 per cent of their basic salary in respect of those Class III employees who are governed under the scales of pay, D.A. and other Allowances (wherever payable) in Part A of Schedule II of (Staff) Regulations, 1960, based on 8 points of the All India Working Class Consumer Price Index (base 1949=100) over and above what is admissible to the said Class IV and Class III employees under clause III of the Memorandum of Settlement arrived at between the Corporation and the All India Insurance Employees' Association on the 23rd January, 1963 would be given until (a) the expiry of the said Settlement or (b) the 1960 base index figures are available, whichever is earlier."

Towards the end of the year 1966, the All India Life Insurance Employees' Association presented to the Corporation, a Charter of Demands, which, according to the Corporation, if accepted, would have involved an additional expenditure of over Rs. 60 crores per annum. While forwarding the same it was also stated that since the settlements would come to an end by the 31st December, 1966, the Corporation should hold negotiations with that Association for settlement of their demands included in the Charter. The All India Insurance Employees' Association (hereinafter referred to as AIIEA) also submitted its Charter of Demands on the 1st February 1967 and suggested that the management should hold negotiations for the settlement of demands on an early date. According to the Corporation, the demands put forward by this Association involved an expenditure of over Rs. 52 crores per annum. Soon after the Charter was submitted, the AIIEA came to be recognised under the Code of Discipline as the sole bargaining union in respect of Class III and Class IV employees of the Corporation. The management, therefore, held negotiations only with this Association regarding the Charter of Demands submitted by it. Various meetings took place between the representatives of the AIIEA and the Corporation. According to the Corporation, "with a view to facilitating a reasonable settlement and in anticipation of return to good times, the Corporation agreed to revise the scales of pay and other allowances and also to improve the terms and conditions relating to the Provident Fund, Gratuity, House Rent Allowance, Medical Benefit, etc." It, therefore, placed concrete proposals involving an additional annual outlay of Rs. 120 crores under different heads, but these proposals were rejected by the AIIEA. The Association also started agitation including token strike for securing their demands. When the token strike of 5th April 1968 was followed by the call for an indefinite strike, the conciliation machinery of the Government intervened and asked both the parties to participate in conciliation proceedings. The Conciliation Officer eventually reported failure of conciliation proceedings. Even after the failure report was submitted to the Government fresh efforts were made to resolve the dispute through bilateral talks. During these bilateral talks the Corporation tried to settle the dispute by improving its earlier proposal by Rs. 36 lakhs, thus offering a total amount of Rs. 1.56 crores per annum. The Association, however, did not agree to this proposal and the bilateral talks ended in failure.

On the 18th November 1968, the Executive Director of the Corporation issued Circular No. 3390/ASP/68 to all the offices of the Corporation saying that it was noticed from the October 1968 issue of the Indian Labour Journal that the 1960 base index figures were published with effect from August 1968; that they replaced the interim series of 1949 which was discontinued; that with the publication of the 1960 base index figures, the temporary dearness allowance granted under the settlement of 1965 had ceased to be payable. All the offices were

directed to stop payment of temporary increase in dearness allowance of 6 per cent of basic pay to Class III employees and 8 per cent of basic pay to Class IV employees from the 1st November 1968. As regards payment of temporary increase in dearness allowance made to the employees for the months of September and October 1968, they were directed to hold the recovery in abeyance until further instructions.

Thereafter, by Notification No. S.O. 4299 dated the 28th November, 1968, the Central Government in exercise of the powers conferred by section 7B and sub-section (1A) of section 10 of the Industrial Disputes Act, 1947, constituted a National Industrial Tribunal at Calcutta and Shri Justice B. N. Banerjee was appointed as its Presiding Officer. The terms of reference of the dispute as specified in the said Order were as follows:—

“Whether the demands made on behalf of the Class III and Class IV employees of the Life Insurance Corporation of India under the following heads are justified? If so, to what extent, and to what relief are the workmen entitled and from what date?”

1. Revision of the scales of pay of different categories of workmen.
2. Revision of Dearness Allowance.
3. Grant of special pay to certain categories of workmen.
4. Payment of other allowances
5. Revision of the existing provident fund, pension and gratuity schemes.
6. Medical benefits.”

Originally, only the following 3 Associations of workmen were parties to the dispute against the Life Insurance Corporation of India:—

1. All India Insurance Employees' Association, Calcutta.
2. All India Life Insurance Employees' Association, Calcutta.
3. All India National Life Insurance Employees' Federation, Bombay

Subsequently, the L.I.C. Higher Grade Assistants' Association made an application to the National Industrial Tribunal, Calcutta, to be impleaded as a party. This application was allowed by the said Tribunal on the 30th January 1969 and this Association was also added as a party.

By Notification No. S.O. 615 dated the 10th February 1969, the Central Government, in exercise of the powers conferred by section 7B of the Industrial Disputes Act, 1947, constituted a National Industrial Tribunal with headquarters at New Delhi and appointed me as its Presiding Officer. By another Order No. S.O. 836 dated the 1st March 1969, the Central Government, in order to expedite the adjudication of the case, exercised the powers conferred upon it by sub-section (1) of section 33B of the Industrial Disputes Act, 1947, and transferred from the National Industrial Tribunal, Calcutta, the proceedings in relation to the said dispute between the management of the Life Insurance Corporation of India and their workmen to this Tribunal.

The record of proceedings was received by this Tribunal from the National Industrial Tribunal, Calcutta, on the 18th March, 1969. This is how this Tribunal came to be seized of this case.

The demands raised by the said Associations in their Statements of Claims being stoutly opposed by the Corporation in its Written Statements the Associations felt that final adjudication of the dispute may take long time in view of the stiff opposition put forth by the Corporation, and so they presented applications for interim relief.

The All India Life Insurance Employees' Association was the first to present its application dated the 26th March 1969 which was received by the Tribunal on the 1st April, 1969. It is stated by the applicant that the Corporation appears to have no dispute with the genuineness, justifiability and urgency of the claims put forward by the Association, and that it has expressed its inability to meet the claims in full because the Corporation thinks that the additional financial burden to meet the claims in full would amount to Rs. 44.75 crores. It is pointed out that the management was prepared to pay an additional sum of Rs. 1.56 crores per annum and thus there was a strong *prima facie* case in favour of the workmen's claims and this is evident from the Corporation's own commitment referred to above. It is further stated that there is an urgency of the situation requiring

immediate relief as the workmen are all very much hard hit because of the spiral rise in the price index numbers only a portion of which has been neutralised by the dearness allowance. It is submitted that the final adjudication will take some time and that an interim award should be given in the interest of justice. It has been pointed out that the total number of all Class III and Class IV employees of the Corporation is about 41,000; that the offered amount of Rs. 1.56 crores would bring on an average Rs. 32 p.m. per workman as an interim payment though the Corporation has the capacity to pay the full amount claimed by the Association. Thus, in short, the prayer of this Association is, that an interim relief to the extent of Rs. 32 per month per workman should be given by an interim award without prejudice to the rights and contentions of the Association made in the original Statement of Claims.

Another application dated the 9th April 1969 almost to the same effect has been submitted by AIIEA. It is stated that during the course of bipartite negotiations between this Association and the Corporation, the Corporation had offered to increase the emoluments of the workmen to the extent of an annual loading of Rs. 1.56 crores; that this offer works out to a monthly increase of Rs. 30/- on an average, although the actual increase on different items may vary from employee to employee. The petitioner goes on to say that subsequent to the breach of bipartite negotiations, the Corporation had withdrawn the payment of temporary dearness allowance the total amount of which according to the Corporation amounts to Rs. 76 lakhs. It is pointed out that with the withdrawal of this temporary dearness allowance the total emoluments of the employees have been reduced to the extent of Rs. 16, on an average, with effect from September 1968. According to the Association, if the saving effected by the Corporation on account of the stoppage of temporary dearness allowance be added to the amount of Rs. 1.56 crores, which it was prepared to pay, and if the total amount be distributed among Class III and Class IV employees, each one may receive Rs. 45/- p.m. It is prayed by the Association that in view of the long time that is likely to be taken in the adjudication and the prices going up day by day, the Tribunal should grant interim relief to the workmen, by giving an interim award, at the rate of 25 per cent of their existing emoluments subject to a minimum of Rs. 50/- per workman.

The third application dated the 7th April, 1969, to the same effect was presented on the 9th April 1969 by the L.I.C. Higher Grade Assistants' Association. This Association has advanced almost the same arguments as the first two Associations. It is prayed that although the offered amount of Rs. 1.56 crores distributed among 41,000 Class III and Class IV employees would bring on an average Rs. 31/- p.m. per workman, due regard should be given to the difference between the existing scales of pay and allowances of the Higher Grade Assistants and those of other categories of workmen and, therefore, the Tribunal should award Rs. 60/- p.m. for Higher Grade Assistants as an interim payment.

The last application, presented by the All India National Life Insurance Employees' Federation (AINLIEF), was received on the 16th April, 1969. It has been stated by the Federation that although in terms of the settlement of 1965, the Corporation was entitled to discontinue the temporary dearness allowance from the 31st December 1966, it continued to pay the same up to November 1968 and thus it had waived its rights to stop the payment. It is pointed out that the Conciliation Officer had submitted his Failure Report on the 17th August, 1968; that the Corporation stopped payment of temporary dearness allowance from the 1st September 1968; and that it acted quickly in issuing its Circular of the 18th November 1968 with a view to forestall the appointment of the Tribunal. It is prayed that the Corporation should be ordered to continue payment of the temporary dearness allowance as before. It is frankly stated on behalf of the Federation that since it was not a party to the negotiations during the course of which the Corporation had offered the annual amount of Rs. 1.56 crores for the Class III and Class IV employees, it was not in a position to say what were the terms of that offer, but it may be taken into consideration for grant of interim relief to that extent with effect from the 1st December, 1968.

The Corporation has filed separate replies to all the four applications and has strongly opposed the grant of any interim relief. The Corporation has raised a few preliminary objections and further opposed the applications on merits as well.

It is urged in the first instance that this Tribunal is not competent to grant any relief because the claim for interim relief has not been included in the

Order of reference and it is not open to the Tribunal to expand the scope of reference.

It was next urged that the settlements of 1963 and 1965, which governed the terms and conditions of service, including pay scales applicable to the workmen connected with the dispute, continued to remain in operation and that wages and other allowances were being paid to the workers in terms of the said settlements. These settlements had not been terminated. This objection was later on abandoned and not pressed at the time of oral arguments.

The Corporation's third contention is that the said settlements imposed onerous burden on the Corporation with the result that its expenses on management crossed the statutory limits prescribed under section 40B of the Insurance Act, 1938 read with Rule 17D of the Insurance Rules, 1939. It is contended that the provisions of section 40B read with Rule 17D are mandatory in character. The renewal-expense-ratio for 1967-68 is stated to be 15.90 per cent against the statutory limit of 15 per cent. It is submitted that the Tribunal should first determine the issue in regard to the mandatory provision about the renewal-expense-ratio before examining the question whether the Corporation is in a position to bear any additional burden which the grant of interim relief would impose upon it.

With regard to the discontinuance of the temporary dearness allowance, it is submitted that this discontinuance was in accordance with the terms of the settlement of 1965 and that the stand taken by the Corporation has been upheld by the judgment of the Calcutta High Court dated the 27th January 1969 which was passed on a writ application filed on behalf of the workers. It is pointed out that a similar petition filed on behalf of the workmen in Bombay High Court was dismissed with costs.

The Corporation also denied that during the course of bipartite negotiations it had proposed an additional outlay of Rs. 1.56 crores per annum only towards the revision of the pay scales of its Class III and Class IV employees. It is averred that in the first place the negotiations which took place between the Corporation and the AIIEA were entirely "without prejudice" and it was not proper on the part of the Association to refer to them. Moreover, that offer was in the nature of a package deal which was to cover all the demands of the workmen as included in the Charter of Demands. According to the Corporation there was no urgency for the grant of interim relief and the applications should be dismissed with costs.

When the applications came for hearing on the 29th April, 30th April and 1st May 1969, it was strongly contended by Shri N. V. Phadke, appearing for the Corporation, that the provisions of section 40B of the Insurance Act, 1938 and Rule 17D of the Insurance Rules, 1939, were mandatory and that since the percentage of management expense ratio incurred by the Corporation had already exceeded the prescribed limit of 15 per cent, the Tribunal could not direct the Corporation to incur further expenditure and, in that view of the law, the question of granting any interim relief did not arise. In reply it was argued by Shri M. K. Ramamurthi, appearing for AIIEA, that the provisions of section 43(2) of the Life Insurance Corporation Act, 1956, were void as they suffered from the vice of excessive delegation; and that the order of the Central Government applying section 40B of the Insurance Act, 1938, passed in exercise of the powers given by section 43(2) of the Life Insurance Corporation Act, 1956, was also invalid. It was next contended that the provisions of section 40B of the Insurance Act, 1938, Rule 17D of the Insurance Rules, 1939, and section 102 of the Insurance Act, on which reliance was placed by Shri Phadke were not applicable to the Corporation as it was not an insurer within the meaning of the term as defined in the Insurance Act. He further proceeded to argue that even if it be assumed that the provisions of section 40B of the Insurance Act and Rule 17D of the Insurance Rules were applicable to the Corporation, the provisions of section 40B were only directory and not mandatory in character.

Shri D. L. Sen Gupta, appearing for All India Life Insurance Employees' Association (AILIEA) and L.I.C. Higher Grade Assistants' Association (LIC HGAA), also argued that the provisions of section 40B and section 102 of the Insurance Act and Rule 17D of the Insurance Rules had no application to the Corporation; that the provisions of section 40B were only directory and that the award of the Tribunal regarding revision of pay scales could not amount to a direction for increasing the expense ratio of 15 per cent. It was pointed out by him that section 47 of the Life Insurance Corporation Act and section 107 of the Insurance Act provided adequate safeguards against prosecution of the officers of

the Corporation under section 102 and, therefore, the apprehension expressed by learned Counsel of the Corporation was unreal.

Shri Shantilal H. Shah, appearing on behalf of the AINLIEF, contended that the grant of interim relief is covered by the terms of reference; that the Corporation had voluntarily agreed to grant temporary dearness allowance which was actually given for about 4 years; that its restoration would not impose any additional burden on the Corporation; that its discontinuance actually amounted to a wage-cut and the Tribunal should, therefore, grant an interim award to relieve the workmen of the hardships to which they were put.

Before examining the merits of the demands for interim relief, it is necessary to determine the following legal issues which arise out of the preliminary objections raised by learned Counsel on either side:—

1. Whether, in the light of the terms of reference, this Tribunal is not competent to award interim relief?
2. Whether section 43(2) of the Life Insurance Corporation Act suffers from the vice of excessive delegation of legislative powers and is, therefore, *ultra vires*?
3. Whether the provisions of section 40B and section 102 of the Insurance Act, 1938, and Rule 17D of the Insurance Rules 1939, would not be applicable to the Life Insurance Corporation even if issue No. 2 is decided against the petitioners?
4. Whether the provisions of section 40B of the Insurance Act, 1938, are mandatory or directory?

It would be proper to take up the determination of the issues in serial form.

To begin with the first issue, it may be observed that the argument of Shri N. V. Phadke is unassailable to the extent that this Tribunal must confine its adjudication to the points of dispute specified in the reference noted above. Section 10, sub-section (4) of the Industrial Disputes Act, 1947, lays down in very clear terms that "where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto". Shri Phadke's further argument, however, to the effect that the question of interim relief is not covered by the reference is not tenable. A glance at the terms of reference would show that the dispute which has been referred for adjudication to this Tribunal is, whether the demands made on behalf of the Class III and Class IV employees of the Life Insurance Corporation of India under the heads given in the Schedule are justified and, if so, to what extent and to what relief are the workmen entitled and from what date. The heads noted in the Schedule relate to:

- (1) Revision of the scales of pay of different categories of workmen
- (2) Revision of Dearness Allowance.
- (3) Grant of special pay to certain categories of workmen.
- (4) Payment of other allowances.
- (5) Revision of the existing provident fund, pension and gratuity schemes.
- (6) Medical benefits.

In the applications which have been filed for interim relief, the petitioners have, for the present, confined themselves to the request that suitable increment should be allowed to them in their present emoluments to give them some relief during the pendency of adjudication. It cannot be gainsaid that the matters raised by them are covered by the first two heads or at any rate they are incidental thereto. The very definition of the term "award" given in section 2(b) of the Industrial Disputes Act, 1947, shows that an award means both an interim and final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A. The substance of the applications is, that the amount of Rs. 1.58 crores which, according to the petitioners, the Corporation had offered to give them for increasing their scales of pay and which offer was rejected by them, should be utilised for giving them temporary relief; that this amount should be evenly distributed amongst all the

Class III and Class IV employees and that should be considered as an increment in their scale of pay. It is also requested that the amount saved by the Corporation by discontinuing the temporary dearness allowance of 6 per cent in the case of Class III and 8 per cent in the case of Class IV employees should be similarly added to their salary. The merits of this demand will be considered at a later stage. For the present, it would suffice to observe that the request made by the petitioners is not beyond the scope of the points of dispute which have been referred to this Tribunal and there is, therefore, no substance in the argument raised on behalf of the Corporation in this behalf. If any authority is needed it would be enough to refer to the observations of their Lordships of the Supreme Court made in the case of *Hotel Imperial, New Delhi and others vs. Hotel Workers' Union* (1959) II LLJ 544. In that case also one of the questions which arose for decision before their Lordships was, whether an Industrial Tribunal was competent to grant interim relief and whether such relief could be given without making an Interim Award and without its publication. Adverting to this question, it was observed by their Lordships as follows:—

"It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words 'incidental thereto' appearing in section 10(4). There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under section 10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms."

It is clear from the above observation that interim relief where it is admissible can be granted as a matter incidental to the main question referred to the Tribunal without being itself referred in express terms. These observations apply with full force to the facts and circumstances of the present case. This issue is, therefore, decided against the Corporation.

Coming to the next issue, it would be proper to reproduce here section 43 of the Life Insurance Corporation Act in full in order to appreciate the entire scheme of law embodied therein and see whether the provisions of sub-section (2) are *ultra vires*:

"Sec. 43 (1) The following Sections of the Insurance Act shall, so far as may be, apply to the Corporation as they apply to any other insurer, namely:—

Sections 2, 2B, 3, 18, 26, 33, 38, 39, 41, 45, 46, 47A, 50, 51, 52, 110, 110B, 110C, 119, 121, 122 and 123.

(2) The Central Government shall as soon as may be after the commencement of this Act, by notification in the Official Gazette, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification, namely:—

Sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 40B, 43, 44, 102 to 106, 107 to 110, 111, 113, 114 and 116A.

(2A) Section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a licence to act as an agent for the purpose of soliciting or procuring life insurance business for the Corporation as if the reference to an officer authorised by the Controller in this behalf in sub-section (1) thereof included a reference to an officer of the Corporation authorised by the Controller in this behalf.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of the Insurance Act other than those specified in sub-section (1) or sub-section (2), shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification.

(4) Every notification issued under sub-section (2) or sub-section (3) shall be laid for not less than 30 days before both Houses of Parliament

as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

- (5) Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation.

The argument of Shri M. K. Ramamurthi in substance is, that since sub-section (2) empowered the Central Government to apply to the Corporation certain sections of the Insurance Act, 1938, "subject to such conditions and modifications as may be specified in the notification" the legislature had conferred excessive powers of legislation because it was open to the Central Government to impose any condition or conditions it liked and to modify the provisions of the said sections without let or hindrance. In other words, there was no guidance given to the Central Government as to what kind of modifications could be made and what conditions could be imposed. Thus, according to Shri Ramamurthi, the provisions of this sub-section suffered from the vice of excessive delegation and, therefore, this Tribunal should hold that the Notification dated the 23rd August 1958 issued by the Central Government in exercise of the powers conferred by sub-section (2) of section 43 of the Life Insurance Corporation Act, 1956, and thereby applying section 40B of the Insurance Act, 1938, is invalid.

The learned Counsel has, in support of his argument, referred to certain cases which will be discussed shortly. Before discussing those cases, it may be observed that the need for delegation of legislative powers or of conditional legislation was realised not only in this country but even in England as early as in the 19th Century. It would be pertinent to refer here to a quotation from Craies on Statute Law (Sixth Edition, page 291). It reads as follows:—

"The increasing complexity of modern administration and the increasing difficulty in passing complicated measures through the ordeal of parliamentary discussion have led to an increase in the practice of delegating legislative powers to executive authorities".

He has given four main reasons why delegation became a normal feature of law-making in that country and those reasons were:—

1. Pressure on Parliamentary time.
2. Technical character of modern legislation.
3. Need for flexibility of law.
4. Emergency powers.

As early as in 1878, it was held by their Lordships of the Privy Council in *Queen vs. Burah* (1877-78) 5 Indian Appeals, page 178, "that legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient". On that principle, it was held that the Indian legislature had powers expressly limited by the Act of the Imperial Parliament which created it, and it could, of course, do nothing beyond the limits which circumscribed those powers. But, when acting within those limits, it was not in any sense an agent or delegate of the Imperial Parliament but had, and was intended to have plenary powers of legislation, as large, and of the same nature, as those of Parliament itself."

I have not been referred to any later case in which the view expressed in the above case may not have been followed. The argument about the vice of excessive or impermissible delegation of legislative power can arise only in those limited cases where legislature is alleged to have abdicated its own authority in favour of some other body. In order to determine whether there was only conditional delegation or the legislature had divested itself of its legislative powers, the entire scheme of the law must be looked at. It may be pointed out that a careful reading of section 43 would show that when the Life Insurance Corporation Act, 1956, was enacted, the Legislature in its wisdom, thought that certain provisions of the Indian Insurance Act, 1938, should also be made applicable to the Corporation. The legislature then divided the relevant sections in three parts. Some of them were applied directly by the Legislature itself. For some other sections, the legislature gave a mandate to the Central Government that it must apply them to the Corporation after making necessary changes. It was further directed that when the changes were effected, the amended section should be

placed before the House for its approval. Then, regarding the remaining sections which were placed in the third part, the legislature left it to the discretion of the Central Government to apply or not to apply them to the Corporation. It was again laid down that if the Central Government, at any time, thought of applying those sections to the Corporation subject to some conditions and modifications, then they should also be laid before both Houses of Parliament. Thus, the perusal of section 43(1) would show that sections 2, 2B, etc., were directly applied to the Corporation by the legislature itself just as they applied to any other insurer contemplated by the Indian Insurance Act. In sub-section (2) it was laid down that "the Central Government shall, as soon as may be after the commencement of the Act, by notification in the Official Gazette, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification". Section 40B also appears among these sections. Then in sub-section (3) it was left to the discretion of the Central Government to apply all or any of the provisions of the Insurance Act other than those specified in sub-section (1) or sub-section (2) to the Corporation subject to such conditions and modifications as may be specified in the Notification.

The essence of Shri Ramamurthi's argument is that the insertion of the words "subject to such conditions and modifications" in sub-section (2) left very wide powers with the Central Government to make changes in the relevant sections of the Insurance Act. The apprehension seems to be that under the cover of introducing "conditions and modifications" the Central Government might alter the provisions of these sections beyond recognition or to meet some purpose other than that for which they were meant. This contention is untenable in view of the clear provisions of sub-section (4) which lays down that every notification issued under sub-section (2) or sub-section (3) shall be laid for not less than 30 days before both Houses of Parliament as soon as possible after it is issued and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following. The provisions of sub-section (4) make it abundantly clear that, in fact, the powers left to the Central Government under sub-section (2) are of a very limited character, because after the changes are made, the Central Government is bound to place the Notification containing the amended law, soon after it is issued, before both the Houses of Parliament for not less than 30 days. It is further provided in the sub-section that the notification shall be subject to such modifications as Parliament may make during the session. The powers of the Central Government under sub-section (2) are, therefore, little better than that of an authority entrusted with draft legislation. The Parliament retained the power of approval and amending the amendments made by the Central Government in its own hands. Section 43 read as a whole, therefore, leaves little room for a reasonable argument to the effect that section 43(2) suffers from the vice of excessive delegation. In fact, it gives powers of conditional legislation and that too with great restraint because the final approval and powers of amendment remained with the Parliament.

It would now be proper to notice the cases on which reliance has been placed by Shri Ramamurthi. He has cited "In re. Art. 143, Constitution of India and Delhi Laws Act (1912) etc.," A.I.R. 1951 S.C. 332, and referred in particular to the following observations of Hon'ble Mukherjee J.:-

"The result is that, in my opinion, the answer to the three questions referred to us would be as follows: (1) Section 7 of the Delhi Laws Act, 1912 is in its entirety 'ultra vires' the legislature which passed it and no portion of it is valid. (2) The Ajmer-Merwara (Extension of Laws) Act, 1947 or any of its provisions are not 'ultra vires' the legislature which passed the Act. (3) Section 2 of Part C States (Laws) Act, 1950, is 'ultra vires' to the extent that it empowers the Central Government to extend to Part C States laws which are in force in Part A States, even though such laws might conflict with or affect laws already in existence in the area to which they are extended. The power given by the last portion of the section to make provisions in any extended enactment for the repeal or amendment of any corresponding provincial law, which is for the time being applicable to that Part C State, is, therefore, illegal and 'ultra vires'."

It may be pointed out that in that case a reference was made by the President of India to the Supreme Court under Art. 143 of the Constitution and the

Court was requested to give its opinion on three questions, which were as follows:—

- "1. Was section 7 of the Delhi Laws Act, 1912, or any of the provisions thereof and in what particular or particulars or to what extent '*ultra vires*' the legislature which passed the said Act?"

Section 7 of the Delhi Laws Act, mentioned in the question, runs as follows:—

"The Provincial Government may, by notification in the official gazette, extend with such restrictions and modification as it thinks fit to the Province of Delhi or any part thereof, any enactment which is in force in any part of British India at the date of such notification."

- "2. Was the Ajmer-Merwara (Extension of Laws) Act, 1947, or any of the provisions thereof and in what particular or particulars or to what extent '*ultra vires*' the Legislature which passed the said Act?"

Section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947; runs as follows:—

"*Extension of Enactments to Ajmer-Merwara.*—The Central Government may, by notification in the official gazette, extend to the Province of Ajmer-Merwara with such restrictions and modifications as it thinks fit any enactment which is in force in any other Province at the date of such notification."

- "3. Is section 2 of the Part C States (Laws) Act, 1950, or any of the provisions thereof and in what particular or particulars or to what extent '*ultra vires*' the Parliament?"

Section 2 of the Part C States (Laws) Act, 1950, runs as follows:—

"*Power to extend enactments to certain Part C States.*—The Central Government may, by notification in the Official Gazette, extend to any Part C State (other than Coorg and Andaman and Nicobar Islands) or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State at the date of the notification and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

It is interesting to point out that in *Rajnarin Singh Vs. Chairman, Patna Administration Committee, Patna*, A.I.R. 1954 S.C. 569, Hon'ble Vivian Bose J., who was also a party to the decision in the Delhi Laws Case, summarised the conclusions of the different judgments given in the first case as follows:—

"Because of the elaborate care with which every aspect of the problem was examined in that case, the decision has tended to become diffuse, but if one concentrates on the matters actually decided and forgets for a moment the reasons given, a plain pattern emerges leaving only a narrow margin of doubt for future dispute."

The Court had before it the following problems. In each case, the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislative way of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows:—

- (1) Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place), the whole or any Central Act already in existence in any part of India under the legislative way of the Centre to the new area:—

This was upheld by a majority of six to one.

- (2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances:

This was also upheld, but this time by a majority of five to two.

- (3) Where the executive authority was permitted to select future Central laws and apply them in a similar way:

This was upheld by five to two.

- (4) Where the authorisation was to select future Provincial laws and apply them as above.

This was also upheld by five to two.

- (5) Where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modification:

This was held to be 'ultra vires' by a majority of four to three.

- (6) Where the authorisation was to apply existing laws, either Central or Provincial, with alterations and modifications; and

- (7) Where the authorisation was to apply future laws under the same conditions.

The views of the various members of the Bench were not as clear cut here as in the first five cases, so it will be necessary to analyse what each Judge said."

Shri Ramamurthi has urged that sub-section (2) of section 43 comes within the ambit of para No. (5) of the above summary. It was to support this argument that he had referred to the observations of Hon'ble Mukherjea J. in Delhi Laws case noted above.

I have given due consideration to Shri Ramamurthi's argument and find it difficult to accept it. A careful reading of Hon'ble Mukherjea J's Judgement in the above case would show that in the opinion of his Lordship section 2 of Part C States (Laws) Act, 1950, was 'ultra vires' only to the extent that it empowered the Central Government to extend to Part C States laws which were in force in Part A States even if such laws were in conflict with or affected laws already in existence in the area to which they were extended. It was observed earlier by his Lordship "that the executive Government was given the authority to alter, repeal or amend any laws in existence in that area under the guise of bringing in laws there which are valid in other parts of India". It was in that view that his Lordship opined that this was an unwarrantable delegation of legislative duties and could not be permitted. It is not understandable how these observations apply to the present case. By section 43 sub-section (2), the Central Government was not given power to repeal any existing law which already applied to the Corporation and to apply some other law existing elsewhere in its place. I need not stress again that the words "subject to such conditions and modifications" were meant to give very limited powers of incidental character and this interpretation is justified by the mode in which the power was used by the Central Government itself. In the Notification dated the 23rd August 1958 whereby section 2D and others were applied, the changes made in various sections were of a formal character. For instance, in section 10 sub-section (2) the amendment made was that for the words "calendar year" the words "financial year" shall be substituted; and so on. Shri Ramamurthi has not pointed out any particular change effected by this Notification to show if the Central Government had anywhere used excessive powers. Far from giving excessive powers of legislation in section 43(2) the Parliament, as already pointed out above, retained the power of final approval and amendments and, therefore, the observations of Hon'ble Mukherjea J., to which he has referred, do not apply to the present case. On the contrary, it may be pointed out that in section 7 of the Delhi Laws Act, the Provincial Government was given powers to extend to the Province of Delhi or any part thereof, any enactment which was in force in any part of British India at the date of its notification. The enactment could be extended "with such restrictions and modifications" as the Provincial Government thought fit. This section was held by their Lordships of the Supreme Court 'intra vires'. The words "with such restrictions and modifications as it thinks fit" were in pari passu with the words "subject to such conditions and modifications" appearing in section 43(2). The ratio decidendi of the Delhi Laws Act does not support the argument of Shri Ramamurthi advanced in the present case. It is not correct to say that his argument would be covered by para (5) of the observation of Hon'ble Vivian Bose J. reproduced above because there was no authorisation in the present case to the Central Government to repeal any laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modifications. In fact, there was no option for the Central Government but to apply the sections mentioned in section 43(2). The only limited power given was to impose certain conditions or make certain modifications which would be necessary while applying those sections to the Corporation. Even those changes stood the necessity of approval from the Parliament before they came into force.

It was argued by the learned Counsel that his arguments find support from the latest pronouncement of their Lordships of the Supreme Court made in the *Jalan Trading Co. (Private) Ltd., and others and Mill Mazdoor Union and others*, (1966) II LLJ 546. I have carefully gone through this judgement and in my opinion the observations in the majority judgement are of little help to support his argument. In that case, the validity of the provisions of certain sections of the *Payment of Bonus Act* was challenged. By the majority judgement, the provisions of section 36 were held to be valid. By that section the appropriate government was invested with power to exempt an establishment or a class of establishments from the operation of the Act provided the government was of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. It was held that the power conferred did not amount to delegation of legislative authority; that it only amounted to conditional delegation and, therefore, section 36 was not void. Section 37 was struck down with the following observations:—

“But section 37 which authorizes the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act, in our judgement, delegates legislative power which is not permissible. Condition of the applicability of section 37 is the arising of the doubt or difficulty in giving effect to the provisions of the Act. By providing that the order made must not be inconsistent with the purposes of the Act, section 37 is not saved from the vice of delegation of legislative authority. The section authorizes the Government to determine for itself what the purposes of the Act are and to make provisions for removal of doubts or difficulties. If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority. Sub-section (2) of section 37 which purports to make the order of the Central Government in such cases final accentuates the vice in sub-section (1), since by enacting that provision the Government is made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act, whether it is necessary or expedient to remove the doubt or difficulty, and whether the provision enacted is not inconsistent with the purposes of the Act.”

These observations are of no help to the petitioners in the present case as they do not lend any support to Shri Ramamurthi's arguments. By section 43 the Central Government has not been given any power of legislation to remove any doubt or difficulty in giving effect to any existing provision of law.

It may be added that the question whether a certain provision of law suffers from the vice of excessive delegation of legislative authority is a ticklish one and, though broad principles are well settled, divergent opinions have been expressed by learned Judges in the application of the principles of particular provisions of law in different circumstances. It is not proper to take out certain observations of their Lordships from the context in which they are made and apply them to different circumstances. In my opinion the argument about the invalidity of section 43 is wholly without substance and this issue is, therefore, decided against the petitioners.

We may now take up issue No. 3. It has been argued on behalf of the petitioners that the Life Insurance Corporation is not covered by the term “insurer” as defined in section 2, clause (9) of the Insurance Act, 1938 and for that reason section 102, and section 40B of the same Act or Rule 17D of the Insurance Rules, 1939, would not apply to the Corporation. To my mind this argument is not sound.

It may be pointed out that in the first place, section 2, which defines all the terms, begins with the usual clause “Unless there is anything repugnant in the subject or context”. This means that if in some case, a repugnancy arises on account of the subject or context in which the terms defined in the section happen to occur, then it is left to the authority interpreting the law to give even a different meaning to the terms defined in the section. Normally, this should not happen, but legislature often takes care to insert such a clause while defining the terms, so that an absurd position may be avoided. In the present case, the legislature itself while enacting the provisions of section 43 of the Life Insurance Corporation Act made it clear in clause (1) that the sections of the

Insurance Act mentioned therein "shall apply to the Life Insurance Corporation as they applied to any other insurer". In my opinion, if reasonably interpreted, these words leave no room for any doubt that the legislature meant to apply the term 'insurer' wherever it appeared in those sections to the Corporation just as they applied to other insurers. Similarly, in clause (2) of section 43 of the Life Insurance Corporation Act, it was laid down that the Central Government shall apply to the Corporation certain sections noted thereunder. In exercise of the powers given under this sub-section the Central Government applied sections 40B and 102 of the Insurance Act and, therefore, it follows as a necessary corollary that the word 'insurer' appearing in these sections would cover the Corporation in the same manner as it would cover any other insurer defined in section 2, clause (9) of the Insurance Act. There is, therefore, no substance in the argument raised on behalf of the petitioners in this respect.

Regarding Rule 17D of the Insurance Rules it has been urged on behalf of the petitioners that the Insurance Rules, 1939, were in force long before the Life Insurance Corporation Act, 1956, was enacted; that Rule 17D was not framed under the rule-making power given to the Central Government under section 48 of the Life Insurance Corporation Act, and, therefore, it would not apply to the Corporation. This argument also carries no force. A careful perusal of the provisions of section 43 again, would show that while framing that section the legislature took good care to make it very clear that it applied certain sections of the Insurance Act mentioned therein to the Corporation. It was not laid down that the sections mentioned therein would be taken to be incorporated in the Life Insurance Corporation Act. Therefore, the moment section 40B of the Insurance Act applied to the Corporation, Rule 17D which was already prescribed by the Central Government under its rule-making power given by section 114 of the Insurance Act, 1938, automatically applied to the Corporation. This issue is also, therefore, decided against the petitioners.

Now, coming to Issue No. 4, it has been vehemently urged by Shri N. V. Phadke on behalf of the Corporation that the language of section 40B sub-section (2), is imperative and the legislature has given a clear mandate that "no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed limits". It is contended that under Rule 17D of the Insurance Rules, 1939, the limit prescribed for management expenses was 15 per cent of renewal premiums if the insurer's business in force after the 10th year was not less than Rs. 10 crores. The Life Insurance Corporation had completed more than 10 years; and its business in force was much more than Rs. 10 crores and, therefore, the maximum limit of its management expenses was 15 per cent of renewal expenses.

The Corporation has given the figures of renewal expense ratio for the years 1957 to 1967-68 as below:—

Year		Renewal Expense Ratio
1957	..	15.89 per cent
1958	..	15.46 per cent
1959	..	12.92 per cent
1960	..	12.90 per cent
1961	..	12.42 per cent
1962-63	..	14.13 per cent
1963-64	..	12.48 per cent
1964-65	..	14.09 per cent
1965-66	..	14.69 per cent
1966-67	..	15.91 per cent
1967-68	..	15.90 per cent

On the basis of the above figures it has been argued that since the Corporation has already exceeded the prescribed limit, the Tribunal is not competent to grant to the employees of the Corporation any interim relief because that would be tantamount to giving a direction to the Corporation to commit breach of mandatory provisions of law.

On the other hand, it has been argued by all the Counsels, appearing on behalf of the Associations that the provisions of section 40B and Rule 17D are directory in character. It is pointed out by them that the Corporation itself is committing breach of section 40B and Rule 17D since 1966-67 on its own showing with impunity

and such an argument does not lie in its mouth just to defeat the claim of the workmen. It is further argued that section 102 would not apply if a breach is committed of the provisions of section 40B. It is contended that the proviso to sub-section (2) of section 40B itself shows that if in any year an insurer spends any amount in excess of the permissible limit, he shall not be deemed to have contravened the provisions of the section if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller. They have also referred to the provisions of section 64K and pointed out that according to its sub-section (2) if an insurer is found guilty of contravening the provisions of section 40B with respect to the expenses of management, the Controller may, after giving the insurer an opportunity of being heard, administer a warning to the insurer. It is next pointed out that according to sub-section (3) of section 64K, if within a period of 7 years two warnings have been given to an insurer, the Controller may cause an investigation and valuation to be made at the expense of the insurer.

Lastly, they have referred to the provisions of Rule 17G of the Insurance Rules, 1939 and pointed out that according to this Rule, if it appears from the report of an actuarial valuation under sub-section (3) of section 64K of the Insurance Act read with statutory returns relating to accounts that the insurer concerned is insolvent, the Controller may cancel the registration of such insurer. It has been urged that Rule 17G does not apply to the Corporation and the Controller cannot cancel its registration. This Rule applies only to other insurers. Learned Counsels for petitioners further proceeded to argue that the maximum penalty in case of other insurers was thus cancellation of registration if after two warnings the Controller were to come to the conclusion that the insurer is insolvent. According to the learned Counsels, if other insurers could not be punished under section 102 of the Insurance Act for committing breach of Rule 17D and section 40B of the Insurance Act, it was incorrect in the part of the Corporation to argue that its officers could be prosecuted under section 102 of the Insurance Act. It was pointed out by Shri D. L. Sen Gupta, appearing on behalf of the AILIEA, that section 107 of the Insurance Act laid down that no proceedings under the Act could be instituted against an insurer or any director, managing agent, manager, secretary or other officer of an insurer without the previous sanction of the Advocate General of the State where the principal place of business of such insurer is situated. This section thus provided adequate safeguard against prosecution of the Corporation in the event of its committing breach of section 40B. It was further pointed out by him that similarly section 47 of the Life Insurance Act provided that no suit, prosecution or other legal proceeding shall lie against any member or employee of the Corporation for anything which is in good faith done or intended to be done under this Act. This again provided, in his opinion, further protection to the Corporation and, therefore, according to him Phadke's apprehension that the Corporation may be prosecuted for breach of mandatory provisions of section 40B or Rule 17D was only illusory.

Shri H. L. Dutta, appearing on behalf of the AINLIEF and the LIC HGAA, while adopting the above arguments further proceeded to point out that the Corporation could know only after the end of the relevant year whether it had exceeded the prescribed limit of renewal expenses while incurring management expenses; that it could not thus be ever established against the Corporation if it had committed breach of law with a guilty intention and there being no specific provision in section 102 that the insurer could be punished even in the absence of mens-rea, there could be no question of its being ever prosecuted successfully under this Act. Thus, according to him, section 102 could not come into play against the Corporation for committing breach of section 40B of the Insurance Act and hence even though the word 'shall' appears in section 40B, sub-section (2), its provision should be taken to be directory.

It would appear from the summary of the arguments reproduced above, that a curious position has emerged out of the arguments advanced by the parties in the present case inasmuch as while it has been urged on behalf of the Corporation that it is bound to be punished under section 102 of the Insurance Act for committing breach of section 40B read with Rule 17D, it has been contended, on the contrary, on behalf of the Associations that the Corporation can never be punished under section 102 for breach of the provisions of section 40B. It is not denied that even though the Corporation has, on its own showing, exceeded the prescribed limits laid down in Rule 17D, no proceedings under section 102 have been taken against it so far. It has brought the provisions of section 102 pointedly to the notice of the Tribunal in order to support its argument to the effect that the provisions of section 40B are mandatory not only because of the use of the word 'shall' appearing

therein, but also because a breach of its provisions is made punishable by the legislature

On the other side, the Associations are not interested in the prosecution of the Corporation. Their main interest at present is to convince the Tribunal that the Corporation is raising a false alarm about the possibility of its prosecution under section 102 and that this Tribunal should hold that the provisions of section 40B are, in fact, only directory in character.

I have given anxious consideration to the arguments raised by the learned Counsels on either side and I think that though at first sight the provisions of section 40B, sub-section (2) appear to be mandatory because of the use of the word 'shall', that impression is not correct and on closer examination they would be found to be directory only. I may at once make it clear that while holding the provisions of section 40B(2) as directory, it is certainly not meant to suggest that the provisions are discretionary. In other words, the legislature has not left it to the discretion of the insurer to incur expenses of management to any extent it may like. It is enjoined upon every insurer who is covered by this sub-section that in every calendar year it should keep its expenses of management within the prescribed limit and that limit should not be exceeded knowingly. The provisions of this sub-section are statutory and the directive of the legislature should be respected and obeyed. If the insurer knowingly disregards the provisions of this sub-section, he certainly lays himself open to the hazard of prosecution under section 102 of the Insurance Act. Learned Counsels for the Associations have not been able to point out if any other specific provision has been made by the legislature to punish the Corporation in case it commits breach of the provisions of section 40B. A careful perusal of section 102 would show that it opens with the words "Except as otherwise provided in this Act." This clearly means that if a specific penalty is provided for breach of any provision of the law then that specific provision would apply to that breach, but if there is no such specific provision, then this section would come into play and whoever makes default in complying with, or acts in contravention of, any requirement of this Act or any rule or order made thereunder, he is liable to be punished under this section. In brief, it is a residuary section for punishing contravention of those provisions of the Act, rule or order for which no specific penalty is elsewhere provided in the Act. I would, therefore, hold that a wanton breach of the provisions of section 40B would, unless it is covered by the proviso to sub-section (2), attract the provisions of section 102 and the person committing breach of law would be punishable thereunder. But even after holding that the breach of the provisions of section 40B is punishable under Section 102, I am inclined to take the view that the provisions of section 40B are not mandatory. It may be pointed out that in (1) *State of U.P. vs. Manbodhan Lal Srivastava*, (1958) 2 LLJ 273, (2) *State of U.P. vs. Babu Ram Upadhyay*, (1961) 2 SCR 679, and again in (3) *Raja Buland Sugar Co. Ltd. vs. Municipal Board Rampur*, (1965) 1 SCR 970, their Lordships of the Supreme Court in their majority judgements have referred with approval to the following pronouncement made by their Lordship of the Privy Council in the case of *Montreal Street Railway Company vs. Normandin*:—

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at..... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

(underling is mine)

It is clear from the above observation that a provision of law should not be considered mandatory simply because the neglect thereof has been made punishable. If it appears from the entire scheme of the law containing the relevant provisions that the legislature intended to lay down that the failure to abide by the terms of the said provisions strictly would render the resultant action null and void and if it is also provided that breach of such provisions would be punishable, then the circumstance that the breach or neglect of law is made punishable would lend support to the view about the provisions being mandatory in character. But if there is substantial compliance of law and failure to observe the provisions strictly does not render the act or acts done in disregard thereof null and void, then merely because the neglect or breach of law is made punishable would not

render it mandatory. In short, it is possible to hold the provision of law to be directory even where the breach or neglect of law is made punishable if there are good reasons and circumstances to support that view.

On the basis of numerous decided cases Crawford, in his well-known treatise on the Construction of Statutes, has brought out the distinction between mandatory and directory provisions of law as follows:—

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other.”

“When a statute is passed for the purpose of enabling something to be done and prescribes the way in which it is to be done, it may be either what is called an absolute enactment, or a directory enactment the difference being, as explained in *Woodward v. Sarsons* that “an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially”; i.e., that the act permitted by an absolute enactment is lawful only if done in accordance with the conditions annexed to the statutory permission.

“If an absolute enactment is neglected or contravened, a court of law will treat the thing which is being done as invalid and altogether void, but if an enactment is merely directory it is immaterial, so far as relates to the validity of the thing which is being done, whether it is complied with or not.”

In *Raza Buland Sugar Co. Ltd. vs. Municipal Board, Rampur* (1965) 1 SCR 970, it was observed by their Lordships as follows:—

“The question whether a particular provision of a statute, which on the face of it appears mandatory inasmuch as it uses the word ‘shall’ (as in the present case) is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of a particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.”

Let us apply the above tests to the present case and see whether the provisions of section 40B(2) are mandatory or directory. The perusal of section 40B, sub-section (2) read with section 102 would, no doubt, show that the legislature did mean to lay down that the insurer should keep expenses of management within the prescribed limit and in case he shows wanton disregard thereof and flouts the provision of law deliberately, he would make himself liable to punishment laid down for its breach. The perusal of the proviso to sub-section (2) however, at once clarifies the real position and it shows that while the legislature on the one hand placed a restraint on the authority of the insurer on expenses of management, it laid down at the same time that if it was found that in any year, an insurer had incurred expenses in excess of the permissible limit he shall not be deemed to have contravened the provisions of the section if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller. This proviso clearly shows that the management expenses incurred by the insurer beyond the prescribed limits would not become null and void if the insurer is able to satisfy the Controller about their reasonableness and the Controller fixes a higher limit for the relevant year. If the earlier part of sub-section (2) was intended to be mandatory by the legislature it could not have at the same time given power to the Controller to take the place of the legislature and legalise the expenses incurred in excess of the prescribed limit. The normal feature of a mandatory provision is that if some act is done in neglect of the duty imposed by law those acts would be null and void. As already pointed out above, if an insurer

has spent as expenses of management some amount in excess of the prescribed limit, those expenses do not become null and void *ipso facto*. If the amount spent in excess of the prescribed limit meets the approval of the Controller then even the hazard of prosecution of the insurer under section 102 is removed. Even in a case where the Controller does not approve of the amount spent in excess of the prescribed limit it is extremely doubtful if the legislature meant to say that those expenses would be null and void. The principle laid down by their Lordships of the Privy Council in *Montreal Street Railway Co. v. Normandin* referred to above, would at once be attracted in such a case. The persons who have to deal with the Corporation during a particular financial year would not know whether the Corporation was keeping its management expenses within the prescribed limit or not. To hold the expenses incurred above the prescribed limit as null and void would certainly "work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty". There is nothing in the scheme of law to indicate that the legislature meant to lay down that the expenses incurred in excess of the permissible limit would be invalid.

In the case of *Reni Drig Raj Kuer vs. Raja Sri Amar Krishna Narain Singh*, (1962) 2 SCR 431, their Lordships observed as follows:—

"A provision giving a discretionary power leaves the donee of the power to use or not to use it at his discretion. A directory provision, however, gives no discretionary power free to do the thing or not to do the thing directed. A directory provision is intended to be obeyed, but a failure to obey it does not render a thing duly done in disobedience of it, a nullity."

The above passage brings out very clearly the distinction between discretionary and directory provisions of a statute. If the provisions are discretionary, it is left to the judgment of the authority concerned to exercise his discretion in one way or the other, though such discretion should be used reasonably, judicially and *bona fide*. The provisions of directory statutes have, however, to be followed in their true spirit. It is not given to the authority dealing with a directory provision to act wilfully in disregard thereof. But, if for some reason, the authority concerned happens to make a departure from the strict compliance of a directory provision and it is substantially complied with, the resultant action would not be null and void. If, however, the provisions of a statute are mandatory, then acts done in neglect of the duty laid down would be null and void whatever inconvenience it may cause. Judged from this angle, I am of the view that although the provisions of section 40B are not discretionary, they are not mandatory either. They are directory in character.

Before leaving this point it may be observed that by stressing the argument that the provisions of section 40B were mandatory and further stressing that the Tribunal must decide this question before considering the applications of the Associations on merit, learned Counsel for the Corporation perhaps meant that in case the provision were held to be mandatory, his contention would shut out the claims of the opposite parties and the Tribunal would not be competent to proceed further to consider the question of giving any relief to the employees of the Corporation as the expenses of management had already exceed the prescribed limit. In my opinion, in a case like this, where a dispute between an employer and his employees regarding pay scale and dearness allowance is referred to a Tribunal, the employer cannot oust the jurisdiction of the Tribunal by merely pleading that the expenses of management incurred by him have already exceeded the prescribed limit. It would be open to the Tribunal even in the face of such a plea to see if it is possible to give relief to the employees. For instance, if the employees, amongst various other grounds, are able to show that the plea of excessive expenditure is a faked one, having been based on manipulation of accounts or contrived to defeat their claim otherwise, or that the expenses have exceeded the prescribed limit on account of mismanagement, or because the management is incurring avoidable expenses, or that there are hidden reserves and there is scope for meeting their demands, I see no reason why the Tribunal should not enter into the question of granting them suitable relief. Though it is not the function of the Tribunal to dictate guide-lines to the employer for managing his business in a particular way, its jurisdiction to consider the question of giving relief and to impart social justice to the employees would not be taken away merely because the employer pleads that the expenses have already gone above the prescribed limits. Issue No. 4 is decided against the Corporation.

Now, entering into the merits of the case the points which call for determination may be analysed as follows:—

1. Whether there is a 'prima facie' case in the petitioners favour for granting them relief for the interim period?

2. Whether there is any urgency for the grant of interim relief?
3. What relief, if any, may be reasonably given to the petitioners and from which date?

The first two questions are closely inter-related and in order to avoid repetition of arguments it would be proper to take up their discussion together.

It has been urged—and rightly so—on behalf of the petitioners that although the Directive Principles of State Policy enshrined in Part IV of the Constitution of India are not enforceable by a Court of Law, the framers of the Constitution have given a clear directive in Article 37 that the Principles laid down in that Part are nevertheless fundamental in the governance of the country. It is also rightly stressed that Article 43 enjoins upon the State that it should endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The petitioners' grievance is that although the Corporation possesses sound financial capacity to reach the ideal of granting them living wage, they are not given even fair wages. They have referred to the norms adopted at the 15th Session of the Indian Labour Conference for the purpose of determination of wage structure and contended that although the Corporation was in a position to adopt those standards, it has failed to conform to them and they deserve better emoluments in keeping with the continued expansion and development of the Corporation's business. According to them, employees of other public sector undertakings, specially of the Reserve Bank, State Bank and certain other concerns including some insurance companies, are receiving much better emoluments. Lastly, it is pointed out that the necessity for improving the wage structure was admitted by the Corporation when it offered to spend Rs. 1.56 crores and thus they had a strong 'prima facie' case for obtaining interim relief.

The stand taken on behalf of the Corporation is that the petitioners are receiving much higher salary and dearness allowance as compared to other concerns; that the offer of Rs. 1.56 crores made during the course of bipartite negotiations was in the nature of a package deal which was made not only to improve the pay scales and dearness allowance but also to improve the terms and conditions relating to provident fund, gratuity, house rent allowance, medical benefits, etc. In its opinion there was no 'prima facie' case for giving interim relief.

It would not be proper at this stage to enter into an elaborate discussion of the question whether the petitioners are lagging behind employees of other comparable concerns in their pay scales and, if so, to what extent. It would suffice to point out that it is not averred on behalf of the Corporation that the petitioners are receiving living wages as distinguished from fair wages or that they are getting need-based wages in conformity with the recommendations of the 15th Session of the Indian Labour Conference. On the other hand, it has been admitted by the Corporation that during the course of conciliation proceedings and its bipartite negotiations with AIEA, it had shown its preparedness first to give them relief to the extent of Rs. 1.20 crores per year and later on, that offer was increased to Rs. 1.53 crores. The perusal of Document marked 'L-61', which has been produced on behalf of the Corporation, shows that it had put forward two proposals. The first proposal suggested revision of any scales while continuing the temporary increase in dearness allowance which the employees were already receiving. The second proposal indicated different pay scales, which were slightly higher, in case temporary dearness allowance was to be discontinued. Of course, the total outlay was spread over the provident fund, gratuity, house rent allowance, medical benefits, etc., besides the revision of pay scales, but it cannot be denied that the Corporation realised the necessity of improving the petitioners' emoluments by that time and conceded the improvement of pay scales. This document alone is enough to substantiate the petitioners' contention to the effect that they have a 'prima facie' case for revision of their pay scales.

Regarding the question of urgency of their demand for interim relief, it is urged on behalf of the petitioners that with effect from 1st August, 1964, an additional amount of temporary dearness allowance equal to 8 per cent of their basic salary in respect of Class IV employees and equal to 6 per cent of their basic salary in respect of Class III employees was allowed to them. This temporary dearness allowance was to continue upto the 31st December, 1966, or the date of availability of 1960, base index figures whichever was earlier. The

index figures, with the year 1960 as base, were not published upto the 31st December, 1966, and according to the terms of the settlement, it was open to the Corporation to stop the allowance from the 1st January, 1967. The Corporation, however, continued to pay the allowance and it was stopped only after the failure of conciliation proceedings, by their Circular dated the 18th November, 1968. It is pointed out that the dispute was referred to the Tribunal on the 28th November, 1968. The Corporation forestalled the reference, and stopped the payment of dearness allowance which could not have been legally done by it after the reference, without the permission of the Tribunal. It is strenuously urged that with the steep rise in prices resulting in erosion of real wages, the petitioners have suffered heavily on account of the discontinuance of the said allowance and thus there is great urgency for interim relief.

In reply, it is contended on behalf of the Corporation, that Class IV employees were already granted 100 per cent dearness allowance while Class III employees were given dearness allowance to the extent of 75 per cent which was quite adequate. The additional temporary dearness allowance to the extent of 8 per cent and 6 per cent in the case of Class IV and Class III employees respectively was allowed since it was pointed out that the 1949 Series of Consumer Price Index was faulty. As soon as 1960 index figures were published, there was no justification left for continuing the temporary dearness allowance and it was stopped in terms of the settlement and not by way of retaliation against the workmen.

It has been further urged on behalf of the Corporation that the writ petitions filed on behalf of the employees for continuing the dearness allowance having been dismissed by the Bombay and Calcutta High Courts they are not entitled to raise the question of dearness allowance again and this Tribunal should not enter into that question.

I may make it clear that the Tribunal is not entering into the question whether the Corporation had a right to stop the payment of dearness allowance in terms of the settlement of 1965, or not. Since reference has been made to judgments of the Bombay and Calcutta High Courts, it may be clarified that those decisions do not come in the way of the petitioners' applications being considered on merits. The Bombay High Court dismissed the writ petition on the more ground that it was not maintainable. The learned Judge of the Calcutta High Court while deciding writ petition No. 7598(W) of 1968, on the 27th January, 1969, observed that the impugned order of the Corporation was not a repudiation of the 1965 settlement but enforcement of the same and, therefore, the writ petition was dismissed. The matter was taken before that Court in its extraordinary jurisdiction and it could not grant any relief to the petitioners outside the terms of the settlement. The following observation made in the above case would show that the petitioners were not debarred from pressing their demand for relief elsewhere:—

"In my view the respondents are seeking to enforce a term of the 1965 settlement arrived at between the employers and the employees. If in consequence of the enforcement of the settlement the employees of the respondent No. 3 are prejudiced, it would not be for this Court to grant them any relief in this Writ petition. A reference regarding various matters has already been made to a tribunal including the question of dearness allowance. The question whether the petitioners should get the Additional Temporary Dearness Allowance would, no doubt, be a matter for inquiry before the tribunal."

The petitioners have not prayed for restoration of dearness allowance as such in terms of the settlement. They have referred to the stoppage of dearness allowance just to show that they have been actually suffering a heavy cut in the total emoluments and that this hardship should be removed by grant of interim relief.

Neither party has placed before the Tribunal as to how the figures of 1949 Series were considered faulty to the extent of 8 per cent. At any rate, it is clear that when 8 per cent was allowed over and above 100 per cent to Class IV employees, the Corporation was satisfied at that time that on the basis of 1949 Series the employees received, only 92 per cent and that is why in order to make it cent per cent 8 per cent was added. It appears from the perusal of Labour Bureau Pamphlet Series 2 (A Guide to Consumer Price Index Numbers) that the 1949 Series was based on constituent series for only 27 centres in the country. Moreover, it suffered from technical defects some of which stemmed from the fact that consumer price index numbers were based on weighting

diagrams derived from old and out of date family budget enquiries conducted amongst workers in different centres, at different periods of time and did not take into account rise in prices of certain necessary items of consumption and services. The State Governments and Central Government set up Expert Committees to report on the defects in the Consumer Price Index Numbers and to suggest remedial measures. On receipt of the Reports of these Committees, at different times, the corrections in the individual indices for the various centres were carried out. Thus, the removal of defects from the 1949 Series was a gradual process inasmuch as the Series for particular centres were corrected as and when the recommendations of a particular Expert Committee concerned with those centres were accepted and made effective. The publication of the 1960 Series which was based on weighted average of 50 component centre indices started with effect from the Index for August, 1968, and the computation of the 1949 Series was discontinued simultaneously. There were, however, a number of agreements and awards in existence which regulated payment of dearness allowance to workers based on the 1949 Series. Indices converted to 1949 base, therefore, continued to be required by users even after the discontinuance of the 1949 Series. To meet this requirement, a suitable linking factor for estimating the 1949 base Index from the new Index on base 1960 = 100 was worked out and published for the information of users. This linking factor worked out to 1.2154. In other words, to derive the All India Index on base 1949 = 100 for any month, the All India Index on base 1960 = 100 should be multiplied by 1.2154 and the resultant figure may be rounded to the nearest integer. When the Corporation issued its Circular dated the 18th November, 1968, the Class III and Class IV employees were directly hit on account of the stoppage of temporary dearness allowance. It was pointed out that 1960 base Index for August, 1968, was 178. According to the linking factor referred to above, the 1949 base Index for August, 1968, was 216. The employees were receiving dearness allowance for the 12 months' average index figure of 206 from the 1st December, 1967, onwards. In terms of settlement dated the 29th January, 1963, the dearness allowance payable to Class III and Class IV employees was to stand automatically increased or decreased, as the case may be, by 10 per cent of the basic salary in the case of Class IV employees and 7½ per cent of the basic salary in the case of Class III employees for every 10 points rise or fall taken on an average during a continuous period of 12 months. The 12 months average index figure on base 1949 = 100 for the period September, 1967 to August, 1968, came to 215. The 12 months' average was slightly higher than 215 in November 1968, when the temporary dearness allowance was withdrawn by the Corporation's Circular dated the 18th November, 1968. Thus, although there was no fall in prices as compared to the 12 months' average index figure of 206 on which the dearness allowance was allowed from the 1st December, 1967 onwards, the petitioners were adversely affected by the sudden discontinuance of the temporary dearness allowance to the extent of 8 per cent and 6 per cent of their basic salary in the case of Class IV and Class III employees respectively.

It was urged by the Corporation's learned Counsel that if the petitioners were receiving more than what was justified for the said period of time, it could not serve as a good argument for continuing that payment. The learned Counsel may be technically correct to the extent that payment of dearness allowance over and above 100 per cent may not be justified in principle but the fact remains that the total emoluments which the petitioners were receiving for the past few years were substantially cut down after the said Circular was issued. If the extra payment in the form of dearness allowance was not justified, proportional increment could be given to the petitioners in their basic wages when the Corporation conceded their demand for revision of pay-scales. It cannot be denied that the Corporation was paying this additional amount knowingly and not under any kind of misapprehension. It would bear repetition to point out that according to document 'L-61' the Corporation was prepared to continue temporary dearness allowance and give some increment in basic wages if temporary dearness allowance was to be discontinued. This position continued by the time negotiations were in progress between the Corporation and AIEA. When the conciliation proceedings and bipartite negotiations failed and a notice dated the 7th November 1968 was given by the employees for indefinite strike from the 5th December, 1968, this Circular was issued on the 18th November, 1968. The petitioners had good reasons to believe that the Corporation, apprehending that a reference of the dispute was imminent, stopped the temporary dearness allowance by this Circular. It cannot be gainsaid that the petitioners have suffered a substantial cut in the payment of their total emoluments and they are undergoing great hardship on that account. Under the circumstances, it cannot be said that there is no urgency for interim relief.

We have now to see what relief may be given to the petitioners at this stage. It is rather unfortunate that the interim relief asked for by the four Associations is not uniform. While AIEA has prayed that interim relief should be given to the workmen to the extent of Rs. 32/- p.m., AIEA has suggested that the workmen should be granted interim relief at the rate of 25 per cent or their existing emoluments subject to a minimum of Rs. 50/- p.m. LIC HGAA has requested that in the case of Higher Grade Assistants Rs. 60/- p.m. per head should be allowed. On behalf of AINLIEF it has been mainly stressed that the temporary dearness allowance should be continued. It is further prayed that the employees' basic wages should be increased to the extent of Rs. 1.56 crores per annum, and this relief should be given from the 1st December, 1968.

To my mind the submission of the Associations to the effect that the salaries of the workmen may be raised temporarily by distributing Rs. 1.56 crores per annum evenly among the employees is not reasonable and it would be difficult to allow such a prayer at this stage. No satisfactory evidence has been laid by the petitioners before the Tribunal so far, to show that the Corporation had agreed to spend the said amount wholly on raising the pay scales of the employees. Moreover, it would not be proper to disregard the differences between the pay scales of various classes, groups and categories, the length of service and other considerations which are necessary for revision of pay scales and distribute the said amount in the manner suggested above. The minimum of the pay scale in the case of Class IV employees at present is Rs. 77 and the maximum is Rs. 145. The annual increment allowed in the initial years is Rs. 2 and it gradually rises to Rs. 5 per annum before reaching the maximum of the scale. If a uniform increment of Rs. 31 or Rs. 32, as suggested by the petitioners, be given, then an employee who has put in about 9 months' service would find that he has at once earned the increments of 11 to 12 years, while a senior employee who is nearing the maximum may not get the same relief. If a minimum increment of Rs. Rs. 50 as suggested by AIEA be given to a new entrant who starts with Rs. 77, his pay would be raised to Rs. 127. Two Associations have suggested Rs. 125 as starting salary. This would mean that he gets as interim relief more than what may be allowed in the final award. A tribunal cannot give as interim relief more than what may be awarded at the time of giving final award. The L.I.C. Higher Grade Assistants' Association has suggested that a uniform increment of Rs. 60 per month may be given to its members as interim relief. The present scale of the Higher Grade Assistant runs from Rs. 190 to Rs. 480 and the increments are spread over 21 years. To my mind, it would be very unreasonable if a person who has just entered the grade is given the same increment as the one who has put in 17 years' service in the same scale. Then, a person who has put in 20 years' service may not get the benefit of this increment unless the maximum of the scale is revised and raised at least to Rs. 540. The question of detailed revision of scales cannot be gone into at this stage since the requisite data has not been placed before the Tribunal so far. Moreover, the petitioners in their original claim-petitions have made a number of suggestions for increasing the number of categories and regrouping them, for increasing the number of pay scales, for reducing the total span of increments, for removal of efficiency bars, etc. It will have to be considered before giving a final award whether the present categories amongst Class III and Class IV employees are not based on sound and reasonable basis, and whether they need regrouping, as suggested in different applications. Suggestions about reducing the span of scales and removal of efficiency bar will have to be considered. Similar other questions will have to be gone into at the proper stage of the case. It would be enough to observe here that the request for distributing the amount of Rs. 1.56 crores, in the manner indicated in the applications cannot be accepted. The only reasonable course to adopt for the present is to allow to Class III and IV employees increase in emoluments at the rate of 6 per cent and 8 per cent of their basic salary till the final adjudication of the reference. It seems just and equitable that the parties should be restored to the position in which they were by the time bipartite negotiations were going on between them regarding the demands put forward by the petitioners. The petitioners deserve to be relieved of the hardship to which they have been put by the Corporation's Circular dated the 18th November, 1968. Technically, it may have been open to the Corporation to stop the payment of temporary dearness allowance after the publication of the 1960 Index figures. But it is a hard fact that the prices had not gone down and the total emoluments which the petitioners were receiving for more than a year and a half were cut down to the extent of 8 per cent and 6 per cent their basic salary in the case of Class IV and Class III employees respectively. When the Corporation was satisfied that the demand of

the employees for revision of pay scales was reasonable to some extent, the same percentage could be spread over their basic salary and dearness allowance. For instance, 8 per cent of basic salary which was allowed as temporary dearness allowance to Class IV employees could be given to them by adding roughly 4 per cent to their basic salary which would have given them an increase of approximately another 4 per cent in dearness allowance. In the same way 6 per cent of basic salary could be allowed to Class III employees towards salary and dearness allowance combined.

To conclude, it is established that the petitioners have a 'prima facie' case, that there is urgency to give them relief and that relief, for the present, should be to the extent of removal of the hardship to which they were put by the Corporation's Circular dated the 18th November, 1968. Even if this Tribunal were to come to the conclusion that the provisions of section 40B of the Insurance Act were mandatory, there could be no difficulty in giving this much relief because, on the Corporation's own showing, the ratio of management expenses to the renewal expenses of the Corporation for the years 1964-65 and 1965-66 was 14.09 per cent and 14.69 per cent respectively. It is clear that even though the temporary dearness allowance was allowed with effect from 1st August, 1964, the percentage of renewal expenses did not cross the maximum limit of 15 per cent in the said two years. If that percentage increased on account of other reasons in 1966-67 and subsequent years the petitioners are not to suffer for that reason.

The applications of the Associations are, therefore, partly allowed and it is ordered that so long as the final award is not made, the Corporation will pay to its Class III and Class IV employees 6 per cent and 8 per cent of their basic salary respectively as interim relief on an *ad hoc* basis. This increase includes dearness allowance and so, no further dearness allowance will be paid thereon. Since this increase is allowed as interim relief, it may be clarified that it will not be taken into account for purposes of provident fund, gratuity, house rent allowance, or any other allowances which is related to basic pay. It will be decided at the time of the final award as to how this increase will be adjusted towards the scales of pay and dearness allowance of the employees.

The three Associations, namely, AIEA, AILIEA and LIC HGAA have not mentioned in their applications the date from which interim relief should be granted. But at the time of arguments it was stressed on their behalf that it should be allowed with retrospective effect. It would suffice to observe that the reference was made on the 28th November, 1968, and the question of granting any relief prior to that date does not arise in the absence of specific averment. The AINLIEF has made a specific request in its application that the interim relief should be granted with effect from the 1st December, 1968. This request is quite reasonable. It is, therefore, ordered that the said payment by way of interim relief will be made from the 1st December, 1968.

In view of the partial success and failure of both the parties they are left to bear their own costs of the proceedings relating to the applications for interim relief.

NEW DELHI;

Dated, June 23, 1969.

(Sd.) D. S. DAVE,

Presiding Officer,
National Industrial Tribunal.

[No. 25/21/69/LRIII.]

New Delhi, the 4th July 1969

S.O. 2797.—In pursuance of section 14 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), the Central Government hereby rescinds the notification of the Government of India in the late Ministry of Labour No. S.R.O. 2277, dated the 6th October, 1955.

[No. 23/5/69-L.R.-I.]

S. S. SAHASRANAMAN, Under Secy.

(Department of Labour and Employment)

New Delhi, the 2nd July 1969

S.O. 2798.—In exercise of the powers conferred by sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952) the Central Government hereby appoints Shri A. Ram Reddy as Inspector of Mines subordinate to the Chief Inspector of Mines.

[No. 8/104/67-M.I.]

J. D. TEWARI, Under Secy.

(Department of Labour and Employment)

New Delhi, the 2nd July 1969

S.O. 2799.—In exercise of the powers conferred by section 4 of the Iron Ore Mines Labour Welfare Cess Act, 1961 (58 of 1961), read with clause (iv) of rule 3 of the Iron Ore Mines Labour Welfare Cess Rules, 1963, the Central Government hereby appoints the Managing Director, Orissa Mining Corporation, Bhubaneswar, to be a member to represent interests of the iron ore mine owners of the State of Orissa in the Iron Ore Mines Labour Welfare Fund Advisory Committee for the State of Orissa, constituted by the notification of the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. S.O. 3693, dated the 9th October 1968, and makes the following amendment in the said notification, namely:—

In the said notification, in serial number 5, for the existing entry, the following entry shall be substituted, namely:—

“Managing Director, Orissa Mining Corporation, Bhubaneswar”.

[No. F. 10/6/67-MII.]

C. R. NAIR, Under Secy.

(Department of Labour and Employment)

New Delhi, the 2nd July, 1969

S.O. 2800.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Singrauli Colliery of National Coal Development Corporation Limited, Post Office Waidhan, District Sidhi (Madhya Pradesh) and their workmen, which was received by the Central Government on the 19th June, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
1600, WRIGHT TOWN, JABALPUR

Dated June 9, 1969

PRESENT:

Shri G. C. Agarwala, Presiding Officer

CASE No. CGIT 60 OF 1965 (BOMBAY TRIBUNAL)
CASE No. CIT/LC-10 OF 1966 (JABALPUR TRIBUNAL)

PARTIES:

Employers in relation to the management of Singrauli Colliery of National Coal Development Corporation Limited, P.O. Waidhan, District Sidhi. (M.P.)

Vs.

Their workmen represented through Madhya Pradesh Colliery Workers Federation, P.O. Chirimiri, District—Surguja, (M.P.)

APPEARANCES:

For employers—Shri R. S. Murthy, Group Personnel Officer, N.C.D.C. Ltd.,
Baikunthpur.

For workmen—Shri Gulab Gupta, Genreal Secretary, M.P.C.W.F.

INDUSTRY: Coal Mine

DISTRICT: Sidhi (M.P.)

AWARD

The Ministry of Labour and Employment, Government of India by notification No. 5/6/65-LRII dated 10th September 1965 referred a dispute as stated in the order and the Schedule, to Central Government Industrial Tribunal, Bombay under Section 10(1)(d) I.D. Act for adjudication from where it was transferred to this Tribunal by notification No. 8/141/66-LRII dated 17th September 1966. The matter of dispute requiring adjudication was stated as follows:—

Matter of Dispute

- (1) Whether the dismissal of Shri G. M. Ansari, a Lower Division Clerk with effect from the 12th October, 1964 is justified?
- (2) If not to what relief is he entitled.

Shri Gulam Mohd. Ansari, to be hereinafter called Ansari, was Lower Division Clerk in the Singrauli Colliery of the National Coal Development Corporation, having come on transfer from another colliery of the N.C.D.C. on 15th July, 1963. The colliery was in a development stage and Shri J. L. Kapoor, to be hereinafter called Kapoor, was the Project Officer and Deputy Superintendent of Collieries from January, 1964 to April, 1966. Before him, one Shri Yadav was the Deputy S.O.C. Singrauli Colliery had two mines—Singrauli No. 1 and Singrauli No. 2 also called Jhingurda. Singrauli No. 1 was closed after some time and Singrauli No. 2 rather Jhingurda was then opened. After Shri Kapoor had joined in January 1964, it appears that there was an impression amongst the workers that he was not fair to local labour and had a bias in favour of Puniabis he himself having been a Punjabi, inasmuch as a few hands had been transferred from Umrer Colliery soon after Kapoor joined as Project Officer. A union was formed in the early part of 1964 which was known as Colliery Labour Union, Singrauli. Shri Bait Nath Dubey was its President. He was an outsider and not a resident of Singrauli. He, therefore, nominated Ansari as Vice President in a meeting of working committee dated 28th March 1964. Ansari appears to have started taking keen interest in union affairs with the result that he came in conflict with the management rather the Project Officer, so much so that on behalf of the Union he indulged in open vilification and resorted to active hostility against Kapoor. He was pulled up and reprimanded for some of his actions and lapses while others were kept hanging till 1st October, 1964 when a charge-sheet on four counts of charges was framed against Ansari. The charge-sheet (Ex. E-1) runs as follows:—

1. That you instigated Shri Rai Das, an L.D. Clerk to assault Shri D. K. Ghosh, the Engineering Assistant and you, yourself took active part when Shri D. K. Ghosh was actually being assaulted by Shri Rai Das on 29th January, 1964.
2. That you sent a false and alarming telegram to the Dy. General Manager in the name of Labour Union and obtained the signature of Shri Madan Singh thereon by duping and misrepresenting the facts to him.
3. That you made a false statement in writing on 3rd April 1964 in order to force grant of your leave.
4. That you were creating indiscipline among the workers and also bitter feelings against the officers.

Ansari gave an explanation (Ex. E-2) denying the charges on 7th October 1964. The Project Officer was not satisfied and recorded an order on 9th October, 1964 that an enquiry committee be constituted. He constituted a committee of three persons namely (No. 1) Shri S. K. Moorthy, Superintending Engineer as Chairman, (No. 2) Shri R. N. Singh, Asstt. Engineer and (No. 3) Shri S. L. Sharma, Senior Driller as members. The order is dated 9th October 1964 and by this Ansari was required to appear before the committee at 2 P.M. Ansari under protest appeared and enquiry proceeded on 9th and 10th October, 1964. The committee recorded a finding of guilty and accepting the same the Project Officer Shri Kapoor passed an order of dismissal on 12th October 1964. Ansari seems to have submitted an appeal or representation to the Managing Director, National Coal Development Corporation Ltd., at Ranchi but it was rejected on 3rd December, 1964. The Colliery

Labour Union decided to amalgamate with a bigger union, called Madhya Pradesh Colliery Worker's Federation and to function as branch of the said M.P.C.W.F. The case was taken up by M.P.C.W.F. which ultimately resulted in this reference.

It is interesting to note that for this delayed decision rendered nearly four and a half years after the dismissal of Ansari, all concerned in same way or the other contributed to the delay. After failure of conciliation and submission of failure report on 6th February, 1965, the reference was made on 10th September, 1965 to Bombay Tribunal. The case remained pending with the said Tribunal without any progress for nearly one year till transferred to this Tribunal. When hearing commenced on 18th October, 1966 before this Tribunal, the employers pressed that their preliminary objection that the dispute was not properly sponsored and was not an industrial dispute should first be heard and decided. According to this request and after evidence was recorded, an order was passed on 18th November, 1966 holding that the dispute was an industrial dispute and the Tribunal has the necessary jurisdiction. This order is Appendix 'A' of the award. The employers took up the matter in writ proceedings to the Hon'ble High Court, Jabalpur and further proceedings were stayed on 14th December, 1966. The writ petition under Articles 226 and 227 of the Constitution was decided on 26th March, 1968 and the order of this Tribunal that the dispute was an industrial dispute and the reference was competent, was upheld. The record, however, was received in July 1968. On the first date of hearing which was 31st July, 1968 the management took adjournment on the ground that the witnesses were not available. The evidence was first confined to the validity of the domestic enquiry and not on the merits of the charges. The evidence on the enquiry part of the case was concluded on 5th September 1968 but after hearing arguments, it transpired that the management should be given a chance to lead evidence on merits also. Since the witnesses were expected to be many, the case was listed for hearing at Singrauli on 3rd, 4th and 5th October when evidence of a number of witnesses of the management and some for the union were recorded. In the absence of Kapoor who had changed his assignment, case had to be adjourned and his presence could not be secured before the hearing rendered on 11th November, 1968. After his evidence was over, for the remaining evidence of the Union case was again posted for hearing at Singrauli but two adjournments were taken by Ansari one on 24th December, 1968 and the other on 5th February, 1969. He, however, examined his remaining witnesses on 17th February, 1969 and wanted a further adjournment for a few more witnesses which was allowed till 17th March 1969. But on this date he gave a statement that no further witnesses would be produced by him. When arguments commenced, a new plea was raised on behalf of the Union by Shri Gulab Gupta, General Secretary of the M.P.C.W.F. who is also an advocate, that the order of dismissal recorded by Shri Kapoor, the Project Officer was illegal and void under the N.C.D.C. rules. Such a plea had not been taken by the Union at any earlier stage. Since, however, the plea was a legal one, it was allowed to be raised subject to payment of certain costs. The management took time to meet the plea and after one adjournment had been taken by them certain papers as affidavit were filed and then arguments were resumed and which were concluded on 4th June 1969. It would thus appear that both the management and union, rather Ansari himself, were in no mood to get an early decision although in the beginning the Union seems to have pressed for early hearing, even at Bombay if necessary, before the Bombay Tribunal.

The dismissal of Ansari has been principally attacked by the Union on the ground of victimisation and the domestic enquiry is assailed on a number of grounds enumerated in paragraph 2, sub-paragraphs 1 to 16 of the written statement. It is unnecessary to notice all the grounds mentioned in the written statement but such of them which undoubtedly reflect on the biased attitude and lead to the inference that the enquiry was not at all a bonafide one and infringed the principles of natural justice, will, however, be noticed.

The first noticeable feature in the case is that the subject matter of the charges were rather old and between the period January to July 1964 as admitted by Kapoor. In respect of charge No. 1 notice had been taken earlier by the management and had held an enquiry also which is now described as a fact finding enquiry but in fact was a full fledged departmental enquiry. The charge relates to an assault on one Engineering Assistant, Shri D. K. Ghosh, both by Ansari and one Rai Das on 29th January, 1964. Ghosh seems to have submitted a report about the incident on 23rd January, 1964 but as Kapoor was not in station he constituted an Enquiry Committee of three persons by an order dated 3rd February, 1964 (Ex. E-35). There was an enquiry conducted by this Enquiry Committee in which Ansari also participated. The Committee recorded statements of a number of witnesses

and then submitted a report (paper No. 18 of Ex. E-35 Series). The Project Officer thereupon by an order dated 30th March, 1964 issued a show-cause notice why disciplinary action be not taken against Ansari. It is difficult to understand what was there to explain for disciplinary action when an enquiry had already been held. Ansari, however, gave a reply on 6th April, 1964 on which Shri Kapoor called for comments of the Chairman of the Committee Shri Banet, who recorded the same on 8th April 1964. No action thereafter was taken till 16th September, 1964 when again a show-cause notice was issued (Ex. W-34). It is pertinent to note that in this show-cause notice, report of Committee was treated as finding of a departmental committee. Ansari gave a reply and then the matter was kept hanging till the charge-sheet dated 1st October, 1964 was framed. There had already been a charge-sheet and enquiry on incident dated 29th January, 1964 and even show-cause notice was given to Ansari not once but twice. That being so, the incident could not be the subject matter of a fresh charge-sheet. When Kapoor was questioned to explain about this, he stated that the earlier enquiry was a fact finding enquiry and he was watching the conduct of Rai Das and Ansari. It is incorrect to say that the constitution of earlier committee was merely for fact finding. As a matter of fact, it was a departmental committee of three members and a regular domestic enquiry was held. The fact was clearly stated in Kapoor's order dated 30th March, 1964 and 16th September, 1964 which were in the nature of show-cause notices giving an opportunity to explain before recording punishment. Apart from this, even if earlier enquiry was fact finding, to keep the matter hanging as a sword of Damocles over the head of Ansari, was unfair and this subject of charge-sheet cannot be a bonafide action particularly when no action was taken against Rai Das. It is true that a criminal case was commenced against Ansari and others by Ghosh and which had now resulted in acquittal. Kapoor, however, did not state that because of the criminal case he kept the matter pending. In fact, he ignored the pendency of criminal case and charge-sheeted Ansari alone. It is further significant to note that three persons, namely Rai Das, D. N. Singh and Ansari were involved in the incident against Ghosh. Ansari was only charge-sheeted and no action had been taken against Rai Das and Singh. This also shows the way in which the wind was blowing and the working of the mind of Kapoor.

The second matter of charge-sheet relating to the telegram was also an old matter of 4th March, 1964 as admitted by Shri Kapoor in cross-examination. He had made enquiries from Madan Singh as early as in April or May. A writing from Madan Singh was, however, obtained in September, 1964. It is thus clear that the telegram affair was also kept hanging or at any rate was unduly delayed. The third matter of charge also related to the month of April, 1964 and was prolonged unnecessarily till made the subject matter of charge. The fourth charge is too vague and contains no particulars. There is evidence to show that in order to furnish material for this charge the Project Officer, as a matter of fact, collected materials and produced the same during the enquiry. All the four subject matters of charge-sheet were not fresh matters and this makes the bonafides doubtful.

Coming to the enquiry itself, a glaring fact is a total denial of reasonable opportunity to Ansari to defend. Kapoor recorded an order on 9th October, 1964 constituting an Enquiry Committee (Ex. E-2 and E-3) and Ansari was required to present before the Enquiry Committee at 2 P.M. on the same date. When Ansari objected to the constitution of the committee personnel particularly for Shri Sharma, Senior Driller (Ex. E-3A), the order of Kapoor was that he should appear before the committee and may say whatever he had to say there (Ex. E-4). It is incongruous to say that Ansari could object before the committee when he was challenging the competency of Shri Sharma, Senior Driller to be a member. It is pertinent to note that all these orders were passed by Kapoor on 9th October, viz. that the explanation was unsatisfactory (Ex. E-2), order for the constitution of the Committee (Ex. E-3), order on the objection of Ansari (Ex. E-3B) and communication of the order (Ex. E-4). The Chairman of the Committee, Shri S. K. Moorthy admitted in cross-examination that before appointment, he was residing at Pipari, far away from Singrauli. He stated that he had been asked earlier whether he would be willing to act on the Committee and also whether 9th October, 1964 would suit him. This means that Kapoor even before the explanation was considered by him on 9th October, 1964 as unsatisfactory, had made up his mind to appoint Shri Moorthy as Chairman of Committee and to fix 9th October, 1964 as the date of enquiry. The whole thing was thus preconceived. Ansari when he appeared before the Committee filed an application (Ex. E-5) raising objections and doubting the impartiality of S/Shri Sharma and Singh and also alleged against the Project Officer. He further requested that the matter be referred to higher authorities for orders. The order of the Chairman of the Committee

was "Will be considered. You are required to go through the proceedings as the Committee has already been constituted." This is hardly a meaningful order deciding the matter. On behalf of the management, it was contended that Ansari had not prayed for time and had he done so the proceedings would have been adjourned. The finding of the enquiry committee (Ex. E-29) itself would reveal that Ansari was in a highly nervous state of mind and that he was somehow pushed to participate in the enquiry. To expect that he was in proper state of mind to ask for time is rather impracticable. It was the duty of the Enquiry Committee itself to have seen that reasonable time was given to Ansari before he was called upon to participate [vide 1963 (II) LLJ p. 396 (S.C.) Associated Cement Company Ltd. Vs. Workmen].

The Committee adopted the procedure of taking up every charge separately and calling for evidence one by one for each charge. When charge No. 4 came to be enquired on 10th October, 1964, the Committee adopted really an extraordinary procedure. On objection of Ansari, it decided to call Shri J. L. Kapoor to explain the basis of the charge. Shri Kapoor came and filed a document (Ex. E-9) bearing signatures of a number of persons complaining against Ansari and copies of a newspaper Kishan Panchayat dated 28th July, 1964, 18th February, 1964, 3rd March, 1964 and 19th May, 1964 having substance of reported speeches of Ansari. Ansari naturally started questioning and cross-examining Kapoor which resulted in exchange of hot words and Kapoor had to leave. The committee relied upon those papers over which Ansari had no access before nor had he any notice thereof and on the basis of wholly a vague charge, Ansari had been found guilty of this charge also. The Supreme Court case Northern Railway Co-operative Credit Society Vs. Industrial Tribunal, Jaipur 1967 (II) LLJ p. 46 is relevant on the subject.

Lastly, it is pertinent to note that Ansari was not given any opportunity for defence. Although, Shri S. K. Moorthy, Chairman of the Enquiry Committee stated in cross-examination that Ansari had been asked if he would produce any witnesses and on which he stated that he would not produce any, yet in cross-examination, Shri Moorthy had to admit that he did not remember at what stage of the proceedings he enquired of this fact and if the fact is not recorded in the enquiry proceedings, then it would mean that Ansari was not asked. There is no such record in the enquiry proceedings. Actually speaking, Ansari gave an application (Ex. E-27) that the complaint signed by large number of persons and produced by Kapoor should be read over to him and a copy furnished so that he could produce witnesses in defence. There is no order recorded on this application and Shri Moorthy admitted that he could not say what order was passed. Evidently the application was ignored and no opportunity for defence was given.

Lastly the findings of the Enquiry Committee holding all the charges proved is on the face of it a perverse finding. There was evidence, no doubt, with regard to charge No. 1 but findings on charges 2 and 3 are based on mere conjectures and suppositions without reference to any specific evidence. For charge No. 4 on a wholly vague and indefinite charge also, Ansari has been held guilty. The finding is nothing but a confusion of thought and conjectural reasons not based on evidence were given so as to dig out grounds for condemning Ansari. Findings need not be elaborate but must be based on evidence [vide 1962(II) LLJ p. 452 Khardah and Co. Ltd. Vs. Workmen (S.C.)]. Without, therefore, going through the various grounds pleaded by the union assailing the enquiry, some of the reasons given above are sufficient to find that there was no bonafide and fair enquiry and further principles of natural justice were clearly infringed inasmuch as Ansari was compelled to participate without reasonable notice, that his application against the constitution of the committee was ignored and no order was passed, that no opportunity for defence was given, that for charge No. 4 for which there had been no material, Shri Kapoor was called and allowed to explain and to introduce some documents and which were considered without giving Ansari an opportunity to explain and lastly the findings on some of the charges are definitely perverse. The essence for a domestic enquiry is the bonafides of the management and as emphasized in Associated Cement Companies Ltd. Vs. Their Workmen and another [1963(II) LLJ p. 396] as also in Sur Enamel and Stamping Works Ltd. Vs. Their Workmen [1963(II) LLJ p. 367], the domestic enquiry must be fairly and properly conducted and should not be reduced to an empty formality. That being so, the enquiry stands vitiated.

When the management fails to satisfy that a bonafide and fair domestic enquiry had been held before recording punishment, it is now a settled law that in that event the management can establish the misconduct by adducing necessary evidence so as to justify the punishment. The discretion in that case passes from

the management to the Tribunal. The management, of course, has to establish the charges by independent evidence before the Tribunal and the evidence produced at the domestic enquiry would serve no purpose [vide 1904(I)LLJ p. 634 *Sainnagar Jute Factory Company Ltd. Vs. their workmen*]. It is further to be remembered that the enquiry before the Tribunal shall be confined to the charges for which the workman had been punished [vide *Laxmi Devi Sugar Mills Ltd. Vs. Nand Kishore Singh*—1956(II)LLJ p. 439 and *Punjab National Bank Ltd. Vs. their workmen*—1959(II)LLJ p 666]. With this in view the evidence produced may now be examined.

For charge No. 1 the management examined the victim Shri D. K. Ghosh as (E.W. 6) and Shri Badrinath as (E.W. 8). Briefly stated, the version of Ghosh was that on 26th January 1964 there was an incident between him and Rai Das, another L. D. Clerk who complained to Ansari. Ansari assured him that the matter would be looked into later on. On 29th January, 1964 at about 9.30 a.m. he was getting down from the Verandah of the office of the Executive Engineer (Civil). Ansari came down from the Verandah of the office of the Executive Engineer (Mech.) and extended his hand so as to wish him and to shake hands. When Ghosh extended his hand, Ansari held it with a firm grip and meanwhile Raidas came and started assaulting with a Ranging Rod. He shouted for help and managed to release the grip. He then started running and was followed by Raidas and Ansari. He fell down in the Verandah of Sinha's quarter where along with Ansari and Raidas, D. N. Singh also gave him a beating. On his repeated shouts certain persons came and saved him. To the similar affect is the corroborating evidence of B. N. Pande. It is needless to give version of Ansari in support of which he also examined some witnesses and in which he denied to have assaulted Ghosh. As already adverted to earlier, Kapoor had already got a different enquiry conducted and on the report of Enquiry Committee had issued show-cause notice, first on 30th March, 1964 and subsequently again on 16th September, 1964. He had relied on the Enquiry Committee presided by Shri B. K. Bahel and there could be no charge-sheeting again and further enquiry on the same incident by another committee. Even if the enquiry by earlier committee presided by Bahel was a preliminary fact finding enquiry, it was not open to have kept the matter pending and in suspense so as to watch the future conduct of Ansari as stated by Kapoor himself. This incident, therefore, could not be a subject matter of charge. The lack of *bonafides* is further evident by the fact that although Rai Das and D. N. Singh were also involved in the assault, yet no action was taken against them. This discriminatory attitude of Kapoor indicates that he had developed a hostility against Ansari partly because of his union activities and partly because he had started indulging in personal vilifications against Kapoor. Be that as it may, the incident dated 29th January, 1964 could not legitimately be taken into account for a charge on 1st October, 1964 and the matter shall be presumed to have been dropped as in the case of Rai Das and D. N. Singh.

Another reason for which the management cannot avail of this incident so as to treat it as a misconduct and entitle them to inflict the punishment of dismissal, is the conspicuous fact that there was a criminal case about the incident and which ended in acquittal of Ansari and other accused. On the authority of the Supreme Court case, *Delhi Cloth and General Mills Co. Ltd. Vs. Kaushal Bhan* [reported in 1960(I)LLJ p. 520] as also *Tata Oil Mills Co Ltd. Vs. Workmen* [1964(II)LLJ p. 113], the employers may have had a justification to proceed with the departmental enquiry and not to stay the enquiry because of the criminal case, but when once the enquiry stands vitiated, the position will have to be taken into account on the facts as they stand now and the fact that the criminal case ended in acquittal cannot be ignored. The Madras High Court in *Shah Kasim Vs. Superintendent of Post Offices* [1965(I)LLJ p. 197] relying on an earlier case of *Jerome D'Silva Vs. Regional Transport Authority* [1952(I)MLJ p. 35] held that where acquittal has not been on technical grounds and is substantially on merits, on identical facts and charges, it would not be proper for a Tribunal to record a finding of guilt and to punish thereon. It was held to be a basic principle of jurisprudence. Various cases of different High Courts were examined in this case and although it was observed that a broad proposition cannot be stated that a delinquent cannot be punished in departmental proceedings, if acquitted by criminal court on same facts, yet it would be incongruous for the Tribunal to record a different and contrary finding. *Banta Singh Vs. N.C.D.C.* and another (reported in A.I.R. 1968 Patna p. 300) is another case in which the N.C.D.C. itself was a party. Consequently, after acquittal of Ansari in the criminal case which was on merits and not on technical grounds, it is not open to consider the charge on merits again, by this Tribunal.

Coming to charge No. 2 which is in two parts, namely sending a false and alarming telegram in the name of the Union and obtaining signature of Madan Singh by duping him and misrepresenting the fact, the evidence produced before this Tribunal is not at all convincing. The original telegram was produced by the Post Master, Waidhan, Shri S. N. Srivastava (E.W. 3). He filed a copy (Ex. E. 34). Ansari admitted that the telegram was in his writing but the sender was Madan Singh. It was delivered at the Post Office on 2nd March, 1964 at 13.15 hours. The telegram which was sent to the Deputy General Manager, N.C.D.C., Ranchi stated "Situation at Singrauli serious. Project Officer created communal trouble. Come at once." It appears that on this telegram some enquiries were made from Kapoor by the Head Office as stated by him. In reply to the wireless message from Ranchi, he sent a reply and then called K. K. C. Mishra, Secretary of the Union and G. M. Ansari. He obtained a writing from both of them on 4th March, 1964 that there was no communal trouble (Ex. E-11). He, however, did not question Sharma whether the telegram had been sent by his consent. Madan Singh, who had been dismissed and was trying to be reinstated had left Singrauli and had joined Orient Paper Mills at Amlai, by the time Kapoor saw the original telegram through Superintendent Post Offices. Having identified the writing of Ansari, he sent a man Shri Sinha to Madan Singh at Amlai, and obtained a writing in September 1964 to the effect that he had been duped by Ansari to sign the telegram. It is on the strength of the writing obtained from Madan Singh that the charge was framed. As a matter of fact, after having seen the original telegram, he asked Ansari to explain why disciplinary action should not be taken (*vide* order dated 30th July, 1964 Ex. E-14) and to which Ansari replied that he had never sent the telegram. Presumably after this, he sent one Shri Sinha to obtain this writing (Ex. E-13) which under the signature of Kapoor bears the date as 24th September 1964. Madan Singh was also examined in the domestic enquiry but his statement in the enquiry cannot be taken into consideration. The employers however, examined him before this Tribunal as (E.W. 4). He stated that he signed the telegram at the request of Ansari who told him that it was being sent to Head Office in connection with his service. He, however, admitted that a Union worker, Shri Sharma asked him to take the telegram to the Post Office alongwith other letters and telegrams and Sharma paid him the cost of the telegrams including this telegram. He was alone at the time when Sharma gave him the telegram. He further admitted that there was a communal question at Singrauli when telegram was sent. In cross-examination, he admitted that he did not complain to anybody that his signature had been obtained by mis-representation. When Madan Singh admitted to have taken the telegram himself to post office, it is difficult to believe that he was not aware of its true contents. The post office is at Waidhan which is at some distance from Singrauli and when he had signed the telegram as sender, it is beyond comprehension that he would not have been aware of the contents when telegram had remained in his possession for quite a long time till delivered at post office Waidhan. The cost of the telegram admittedly was paid by the Union. Ansari, therefore, cannot be treated as sender of the telegram but actually it was the Union which sent it through Madan Singh. There is evidence of Bhari Rai (W.W. 8) who stated that when Yaseen Khan and Madan Singh had been discharged and they got no redress from Kapoor, the workers held a meeting and decided to send a telegram to Ranchi. They got the telegram written by Ansari. Consequently, Ansari was only the scribe of the telegram and not the author. It was either Labour Union or Madan Singh. Madan Singh also admitted the fact that when telegram was sent, there was communal question. Presumably by communal question, both the Union and Madan Singh considered regional question of Punjabis and Non-Punjabis as the complaint against Kapoor was that he was having Punjabis at the expense of local labour. According to Ansari, Shri D. K. Sharma got the telegram signed by Madan Singh. He stated that by using the term communal trouble, he meant provincial feeling. Be as it may, when Madan Singh himself admitted that he had signed the telegram and took it to post office, at the instance of Sharma, Union Secretary, who paid the cost of the telegram, it cannot be said that the sender of the telegram was Ansari and it can also not be believed that Madan Singh was duped by Ansari. The charge is, therefore, not proved.

For the third charge as stated is "that you made a false statement in writing on 3rd April, 1964 in order to force grant of your leave" there is no evidence whatsoever that the leave obtained by Ansari on the ground of his sister's illness was a false statement. Ansari had been taking short leave on previous occasions also as would appear from applications dated 10th February, 1964, 11th March, 1964, 12th March, 1964 and 16th March, 1964 [papers number 1 to 4 (Ex. E-37 series)]. It, however, appears that on 3rd April, 1964 he applied for 6 days leave on account of his sister's illness. While sanctioning leave Shri Kapoor recorded

the following order "Five days Casual Leave is granted subject to the condition that he will submit a medical certificate from a doctor to prove the contents of the letter. Applicant may note this fact. No extension of leave would be permitted." This was recorded on 3rd May, 1964 after a month of the original application and was noted by Ansari. After application dated 3rd April, 1964, he seems to have pressed for the leave by application dated 22nd April, 1964 on which Shri Kapoor recorded an order on 2nd May, 1965 "regret leave cannot be granted at present." Ansari seems to have again represented giving his grounds on the office copy of the order and presumably on his further representation, he was granted this leave. He rejoined after expiry of his leave and medical certificate does not seem to have been demanded nor any action taken against Ansari until 16th September, 1964 when a show-cause notice was issued (Ex. E-15) as to why he failed to furnish proof of his sister's illness. Ansari gave an explanation on which Kapoor recorded an order that because there was a suspicion, therefore, medical certificate had been demanded. If is, however, material to note that Ansari had applied Earned Leave by means of applications dated 11th July, 17th July and 25th July, 1964 and seems to have produced telegrams received from home intimating about his sister's illness. The leave was sanctioned by Kapoor after considerable difficulty by an order dated 13th August, 1964, and Ansari availed this leave from 16th August to 31st August, 1964. Relevant papers are to be found in Ex. E-37 series filed by the management. No medical certificate of his sister's illness for subsequent Earned Leave for 15 days had been demanded and it is curious to find that for only 5 days' Casual Leave on application dated 3rd April, 1964 granted on 3rd May, 1965, Ansari was being required to furnish medical certificate of illness of his sister. In any case, it was for the employers to have proved by evidence that the statement in application dated 3rd April, 1964 to obtain leave was false and this they had failed to substantiate by any evidence. The charge is not for disobedience to comply with the order to furnish medical certificate of illness of his sister. Had it been so, it would have been further necessary to enquire whether the order was reasonable and the employee was bound to comply with it. Such a question, however, does not arise in this case as the charge framed was an affirmative one that a false statement was made in application dated 3rd April, 1964 and to support which there is no evidence from the side of the management. However, strong may be the suspicion that the ground was a faked one, but suspicion cannot take the place of proof. As there is no evidence to support it, the charge is, therefore, not proved.

The fourth charge that he had been creating indiscipline among the workers and also bitter feelings against officers is wholly a vague charge which could not be taken into account in the domestic enquiry nor the management can be permitted to introduce evidence before this Tribunal so as to lend support to this vague charge. Even if the evidence is examined, there is hardly anything of substance against Ansari. In the domestic enquiry, an attempt was made through Shri Kapoor to introduce some evidence and explain the charges. An application purported to have been signed by large number of workers (Ex. E-9) was filed. The substance of the application was that Ansari was creating rifts among workers and that in the name of the Union he was indulging in various activities. Some newsitem in Kishan Panchayat dated 18th February 1964, 3rd March 1964, 19th May 1964 and 28th July 1964 were also filed. Before this Tribunal the management examined two witnesses namely C. Rai (E.W. 7) and Ramji Sharma (E.W. 9). The statement of Shri Rai was that he and many decided to send a complaint against Ansari to Project Officer in August 1964 and he was a signatory of the application (Ex. E-9). In cross-examination, he stated that some 10 or 15 persons decided to send the complaint, the draft of which was prepared by him. He, however, stated that he did not know what happened to the draft and could not say in whose writing was Ex. E-9. Ram Naresh Singh and five or six persons came and obtained his signature on Ex. E-9. He did not know in how many days all other signatures were obtained. No enquiry, however was made on this complaint. Ramji Sharma also stated that when approached by Ram Naresh Singh and a few others he signed on the application. Mere sending the complaint signed by some workers would not necessarily mean that Ansari had been creating bad feelings amongst workers. There should have been positive proof through witnesses for such facts through which an inference of creation of bad feelings and indiscipline could be inferred. Shri Kapoor in his evidence did not state anything specific. The management had also examined Shri Bafinath Dube (E.W. 5), President of the Union and Editor of Kishan Panchayat. He stated that the newsitems about the speeches by Ansari in Kishan Panchayat (Ex. E-25, E-25A, E-26 and E-26A) were inserted at the instance of Ansari on whom he depended and had made him as Vice President. He did not state specifically that any of the newsitem was false and was inserted on misrepresentation of facts by Ansari. He admitted that the treatment of Shri Kapoor

was really not good towards Ansari and Kapoor undoubtedly attempted that Union be not formed. He further admitted that resolution as stated in Kishan Panchayat (Ex. E-26) that local labour be given preference was passed in the extraordinary meeting of the Union. He confirmed about various letters and resolutions of the Union, some of which were directed against Project Officer (Ex. W-18 to W-30). Whatever may have been, the fact there is nothing in his evidence to substantiate the charge against Ansari. On behalf of Ansari, some evidence was produced to show that when Shri Kapoor came from Umrer in January 1964, he brought some Punjabis and that the behaviour of Kapoor was good towards local people. These witnesses are Shri R. M. Warier (W.W. 2), Radha Kishan Dupe (W.W. 3) Sarpanch of Gram Panchayat, Mohd Mustafa (W.W. 4), Gagan Kumar (W.W. 5), Ramnajan Singh (W.W. 6) and Binari Rai (W.W. 8). Two of these namely Mohd. Mustafa (W.W. 4) and Gagan Kumar (W.W. 5) stated that a paper like Ex. E-9 was brought to them for signature on the false pretext that for establishment of a post office and introduction of school bus, signatures were being obtained. They smelt something foul on the part of Kapoor and therefore did not sign. In this case, the conduct of Kapoor has not to be examined but only of Ansari. There is reasonable ground to suppose that the campaign to obtain signatures on Ex. E-9 was prompted by Kapoor himself. In any case, there is no evidence to show that Ansari was creating indiscipline and bad feelings amongst workers. He may have been indisiplined himself which undoubtedly he appears to have been so, but he cannot be condemned for the vague charge of creating indiscipline among workers. Whatever he had been doing was in furtherence of union activities as Vice President and as an active worker thereof.

The second part of the issue that he was creating bitter feeling against officers, is so general that no serious notice need be taken. Except that Ansari did try to expose Kapoor which may have been right or wrong, there is nothing that he made false allegations against officers and created bitter feelings. This charge also is of no avail to the management.

The result, therefore, is that none of four charges have been found to be proved which could justify the management to inflict the punishment of dismissal. It may be mentioned that during the stage of arguments for the first time, a plea was raised on behalf of the Union that the Project Officer, Shri J. L. Kapoor, though he was an appointing authority yet was not competent to impose the punishment of dismissal under N.C.D.C. Rules. Since the plea was a legal one, management was given an opportunity to meet the same. The N.C.D.C. Corporation Rules (March 1966 edition) under Section II, rule 3(1) at page 111 states authorities specified in column 3 of the schedule which could impose penalties specified in column 4 against corporation servants shown in column 1 of that schedule. This is, however, subject to Rule 4. Rule 4(a) states that no corporation servant shall be removed or dismissed by an authority lower than that by which he was appointed to the post held by him. The schedule at page 125 states that for staff the minimum and maximum of whose scale of pay are below Rs. 200/- p.m., the competent authority would be the Head of the Department. In column 3, authorities which may impose punishment are stated and Project Officer is one of them. Column 4 states that penalties 1, 2 and 3 only could be imposed by them which means penalties of censure, withholding of increment or promotion, and recovery from pay of the whole or part of any pecuniary loss etc. Dismissal is penalty number seven. It follows, therefore, that although the Project Officer was the competent authority yet he could not impose the punishment of dismissal. On behalf of the management an attempt was made to introduce documentary evidence so as to show that this power had been delegated by the Board to the Managing Director and the Managing Director delegated it to the Project Officer. Documents were filed by an affidavit of Shri R. S. Murthy dated 6th May 1969 but they do not lead to this inference. They only go to show that the Board of Directors had delegated certain powers to the Managing Director but it is not shown that in supersession of the rules the Managing Director had delegated his powers of punishment to the Project Officer to dismiss a member of the staff. The fact, however, is of academic interest only. Ansari had acquiesced to the dismissal order and had filed an appeal to the Managing Director which was dismissed by an order dated 3rd December 1964. Even if the Project Officer had not the necessary powers to dismiss, the dismissal of the appeal by the Managing Director, who had overall powers to impose any penalty under Section II rule 3(2) and also to deal with appeals under rule 15 together with revisions under rule 23 would be sufficient to cure the defect and dismissal would atleast be operative from the date of dismissal of the appeal. The question, however, does not arise now as on merits, charges not having been found proved, dismissal is found to be unjustified. In charge-sheeting Ansari, personal factor counted more with Kapoor than actual victimisation because of trade union activities.

It appears that Ansari was incharge of despatch. He was on leave from 12th February to 24th February 1964. During this period, Rai Das worked in his place. There was an accident on 13th February 1964 in which a Shovel Operator was injured. It was alleged that the Project Officer Shri Kapoor was not in station from 10th February to 15th February and Rai Das received certain papers for despatch including the report for accident on 16th February after return of Kapoor. When Kapoor came, he wanted Rai Das to show despatch of the accident report on 13th which was actually given on 16th February. Rai Das expressed his inability on which Project Officer is alleged to have removed some papers of Despatch Register, pages Nos. 63 to 68 and crossed all the entries from serials 234 to 237. He then got the despatch of accident report re-entered through B. P. Sinha. When Ansari returned from leave, he stated that Rai Das gave him the torn pages and which were filed by him as Ex. W-40. He sent a complaint to the Deputy General Manager (Ex. W-39) on 12th April 1964. Shri Kapoor denied to have torn the pages of Despatch Register but admitted that despatch work was taken away from Ansari. It is thus manifest that right from early March 1964 Ansari had come in conflict with Kapoor. Whether the various allegations of Ansari were correct or not is not the point for consideration. The fact remains that there was no love lost between the two and considering the further fact that an agitation had been launched by the workers and the union that Kapoor had contrived to get Punjabis from outside ignoring the claim of local labour, the charge-sheet was mala fide so as to wreak vengeance against Ansari. It was motivated more on personal grounds rather than for anything else, and as it was not a *bonafide* one, to that extent the action amounted to victimisation, both on account of personal malice and Trade Union activities of Ansari.

The management raised a technical objection that reference was bad in as much as Singrauli Colliery is closed. This is wholly a flimsy objection. Only Singrauli Mine 1 is closed and Singrauli No. 2, rather Jhingurda working. The whole project is known as Singrauli Project. The objection, therefore is meaningless and is held untenable.

With this conclusion, Issue No. (1) under reference will have to be answered in negative. As to Issue No. (2) regarding relief, the normal rule is that when a dismissal is found unjustified and wrongful, reinstatement with back wages is the proper relief. There are, however, exceptions and if the circumstances of the case so require, it may not be desirable to order reinstatement but to award compensation instead (*vide* Punjab National Bank Ltd., vs. Workmen—1959(II)LLJ p. 666, Assam Oil Company vs. Their Workmen—1960(I)LLJ p. 587 and Samnuggur Jute Factory Co. Ltd. vs. Their Workmen—1964(I)LLJ p. 634 Supreme Court). The past record of Ansari had been far from satisfactory. Ex. E-36 series is a file of papers which deals with the conduct of Ansari in abusing and threatening one K. C. Mayan, Rigman on his complaint dated 11th June 1964. An enquiry was held and a Committee presided by Shri Bhatnagar submitted a finding on 8th July 1964. A show-cause notice was issued by Shri J. L. Kapoor on 16th September 1964 as why his services should not be terminated. Ansari gave a reply and in which making allegations against Kapoor, he wanted permission to approach higher authorities at Ranchi. This probably silenced Kapoor and no action on this was taken. Another File (Ex. E-38 series) relates to an incident on complaint made against one B. P. Sinha on 2nd June 1964 by Ansari himself. After an Enquiry Committee presided by Shri H. K. L. Jais reported on 15th July 1964 that as a matter of fact Ansari was at fault and disciplinary action be taken against him, another show-cause notice dated 16th September 1964 was issued why his services be not terminated and to which Ansari gave a reply on 21st September 1964. The matter was not proceeded with and at any rate no punishment was inflicted.

File Ex.-39 series shows that a notice dated 16th September 1964 was issued stating that as Ansari was found an untrustworthy employee and had been warned for lapses on 12th April 1964 why his services be not terminated. In reply of this Ansari against threatened that he would submit proof before higher authorities. This file contains report of one Shri Bhatnagar dated 2nd March 1964 which states that in the night at about 9 p.m. Ansari came with some persons and misbehaved with him. There is a note of Shri Kapoor that Ansari had been reprimanded for creating unhealthy atmosphere. He had been warned to improve his conduct and to cooperate with his colleagues by an order dated 12th April 1964. Again for coming late by an order dated 20th May 1964 he had been warned. By another order dated 17/18th April 1964 it is stated that it had been brought to notice the fact of non-submission of a file about short supply of claim against railway. He

was warned by letter dated 19th April 1964 and to which he recorded an endorsement. Another letter dated 3rd October 1964 calls for his explanation for a telegram sent on 14th September 1964 to N. C. D. C. Ranchi as follows:—

"Jeep 9455 N.C.D.C. Singrauli used in personal capacity for conduction case against Ansari in Court Waldhan snap taken action requested Ansari Singrauli Colliery."

Ansari gave a reply that he sent the telegram as Vice President of the union. An office bearer of the union has no carte blanche to behave in any manner he likes. As a matter of fact, he has a greater responsibility to behave more responsibly (*vide* Bengal Bhatdee Coal Company *vs.* Ram Prabesh Singh—1963 (I) LLJ p. 291). He exceeded all legitimate limits and seems to have thought that in the capacity of union worker, he had the license to commit all sort of lapses and misdeeds. The agitation of the Union against Kapoor for inducting Punjabis was given a communal colour in the telegram of Madan Singh deliberately. This is because one Muslim, Yasee Khan had been discharged alongwith Madan Singh. In this telegram of Madan Singh which was the subject matter of charge No. (2) the use of the word "Communal" evidently was introduced by Ansari with sinister motive. Even before he came to Singrauli and while he was at Kathara Colliery, he seems to have been given a warning by order dated 7th January 1963 (paper number 21 file Ex. E-39 series) for removing two wooden boxes without authority. There were complaints against him by contractors M/s. Ram Chandra Singh and Co. and S. P. Vij Construction & Co. (Ex. E-17 and E-20) that their labourers were being instigated and interrupted by Ansari. All these lead to the conclusion that Ansari is not a fit person to be reinstated for employment with the N.C.D.C. As a matter of fact, if Kapoor had proceeded with balance of mind in a bonafide manner and charges had been framed correctly for various acts of commission and omission, the management could have found ample justification to dispense with his services. The tragedy, however, was that Kapoor made it a personal question and indiscreetly fell in errors which brought about this result. I would, therefore, instead of ordering reinstatement, award compensation only. He had joined Singrauli Colliery on 16th July 1963 and had not been in the service for even one and a half years before his dismissal which may be treated as effective from the date of disposal of his appeal by the Managing Director on 3rd December 1964. As L.D.C. he was in the pay scale of Rs. 110—180 as would appear from Ex. E-6. It is, however, not known how much he was drawing at the time of dismissal as basic pay and other benefits. For an L.D.C. who had not put in even two years service, compensation roughly for about four years wages should meet the end of justice. There can be no measure to assess compensation in such cases and I think to award a sum of Rs. 8,000/- (Rupees eight thousand only) should fulfil the requirements of social justice.

Decision:

The result is that for issue number one under reference, it is held that the dismissal of Shri G. M. Ansari was unjustified. For issue number two, it is held that he is not entitled to reinstatement but would be paid Rs. 8,000/- (Rupees eight thousand only) as compensation. The Union would be entitled to Rs. 100/- as costs from the management.

(Sd.) G. C. AGARWALA,

Presiding Officer.

9-6-69.

APPENDIX 'A'

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (CENTRAL),
JABALPUR.

Dated November 18, 1966

ADJUDICATION CASE NO. 60 OF 1965 (BOMBAY)

ADJUDICATION CASE NO. 10 OF 1965 (JABALPUR)

In the matter of an industrial dispute between the workmen and the employers⁴ of the concern known as M/s. Singrauli Colliery of N.C.D.C. Ltd., Singrauli, Distt. Shidhi, M.P.

APPEARANCES:

For the workmen—Sri Gulab Gupta, Authorised representative.

For the employers—Sri R. S. Murthy. Authorised representative.

DISTRICT: Shidhi M.P.

INDUSTRY: Colliery.

ORDER

The employers in this case have raised two preliminary objections viz. (1) that the dispute is not an industrial dispute and therefore the Tribunal has no jurisdiction and (2) that the Madhya Pradesh Collieries Workers' Federation is not entitled to represent the workmen in these proceedings nor can Sri Gulab Gupta act on behalf of the workmen.

The first question is more important and goes to the very root of the case because if the dispute is not an industrial dispute neither the Government of India would have competent to make a reference nor the Tribunal could assume jurisdiction and proceed to adjudicate the dispute on merits.

The law on this question is well settled. Even if the dispute relates to a single individual as in this case it would assume the character of industrial dispute if it has been espoused by the Union of the concern or a general union of the industry provided a substantial number of workmen are members of the general Union, and if there be no union of workmen of either of the two category then a substantial number of workmen of the establishment should be proved to have made a common cause by sponsoring the dispute. In this case, it appears that there was a Union of the establishment known as Colliery Labour Union, Singrauli. There is ample proof to show that the concerned workman, Sri G. M. Ansari, was its Vice President, Ex.W.1 is a copy of communication sent by this Union to the employers dated 4th March 1964 giving a list of the members of the Executive Committee and Sri G. M. Ansari is stated as Vice President. To the same effect is a communication dated 19th May 1964 giving a list of office bearers of the Union (Ex.W.2). It appears that after the services of Sri Ansari had been terminated by the management with effect from the 12th October, 1964 there had been a good deal of correspondence and concerted efforts made by this Union at different quarters for settlement with the management and to procure a reference. This Colliery Labour Union decided to merge into the bigger union of the industry known as Madhya Pradesh Collieries Workers Federation which is affiliated to I.N.T.U.C. and which has its head office at Kurasia. Ex.W.3 is a copy of resolution of the Executive Committee dated 17th November 1964 wherein it was decided that this Union should merge with the M.P. Collieries Workers Federation. On the same date a meeting of the General Council of this federation was held and the resolution of the Executive Committee was endorsed and confirmed. Sri Ansari has come in evidence and affirmed that there were two such meetings on the same date, one of the Executive Committee and this was followed by a meeting of the general body known as General Council. In the General Body meeting there were 109 members present. This statement on oath of Sri Gulam Mohd. Ansari remained uncontroverted and is supported by documentary evidence. As a matter of fact, this proposal of merger which was initially made in November, 1964 was re-adopted and was accepted by the M.P. Colliery Workers Federation, to be hereinafter described as Federation. Another meeting of the General Council is dated 23rd May 1965, true copy of the minutes being Ex.W.15. The Federation since then had been operating with a branch at the Colliery and for all practical purposes Colliery Labour Union is now functioning as a branch of the Federation. The Federation after accepting the proposal addressed a communication, first to the management on 17th December 1964 (Ex.W.17) intimating the fact that Colliery Labour Union had amalgamated with them and that they would now represent the workers of the Colliery. They requested for necessary facilities for running an office in the project. The receipt of such a communication was not specifically denied by Sri Gia Lal Kapoor M.W.1, who was Dy. Chief Mining Engineer and Project Officer, Singrauli from January, 1964 to April, 1966. The Federation also intimated the fact to the Registrar Trade Union, M.P. at Indore, and sent a copy of the resolution containing signatures of a large number of workers presumably who were presumably members of the Colliery Labour Union. This was a step in accordance with the Regulation 14 of the Madhya Pradesh Trade Union Regulations, 1961. The constitution of the Federation which has been filed by the management provides under Cl.8(c) for opening of new branches at different Collieries in M.P. and (cc) for amalgamation of existing union of a colliery with the Federation. The employers have taken a stand that this amalgamation as provided in Cl.8(cc) of the constitution has not been brought about in accordance with the provisions of the Indian Trade Unions Act namely, Sections 24 and 25 of the Act. In support of their stand they have relied on a communication from the Registrar, Trade Unions intimating that

Colliery Labour Union, so far as their records are concerned, were still in existence and that the amalgamation has not been recognised by them for non compliance of certain formalities (*vide* Exts. M-5, M-9, M-11 and M-13). This may or may not be so and is not a material factor for the purposes of this proceeding. As a matter of fact, this is not a case of amalgamation as contemplated by Reg. 14 of the M.P. Trade Unions Regulations and Sections 24 and 25 of the Indian Trade Unions Act. The Federation also has wrongly used this term in their constitution. It is a case of merger of a smaller unit with bigger one. Amalgamation connotes an idea of union of two equal or similar bodies. When a union of a concern unit eswith a bigger union of a industry which is not equal and similar in its ambit the proper term is merger of the smaller one into the bigger one and for which there no provision has been made either in the Regulation or in the Indian Trade Union Act or even in the constitution of the Federation. The Federation obviously has been labouring under a misconception that clause 8(cc) would apply and they have to intimate the Registrar, Trade Unions, in accordance with the Regulations. In any case, the constitution provides for opening of new branches in different collieries under Cl. 8c) and a new branch has in fact been opened and is actually operating. There is a specific resolution of the General Council dated 23rd May 1965 (Ex.W.15). For espousal and representation, it is not necessary to go into the question whether this union of the Union with the federation was or was not an amalgamation legally brought about. All that has to be seen is whether in fact the Union had ceased to function and the Federation is now operating through its branch. The validity of the merger or amalgamation of a Union is not a matter relevant for consideration, this being not a dispute between the two rival unions where such a question could crop up for determination. A.I.R. 1962 Patna P. 338 has therefore no relevance nor is the other ruling 1966(ii)LLJ P. 261, cited on behalf of the employers. The latter deals with entirely a different subject. The *de facto* operation of the Federation through its branch and the cessation of the activities of the Union with an independent identity is really that matters and which has been abundantly proved in the case. As far as espousal is concerned there had been repeated espousals both by the Union and by the Federation. Ex. W. 7 is a copy of the resolution of General Body of Colliery Labour Union as also of workers in general which among other matters decided to fight out the case of Sri Ansari, workman concerned. It was also resolved that Sri Gulab Gupta, General Secretary of the Federation be requested to take up the matter and the workers would contribute to the expenses. Another copy of the proceedings of Colliery Labour Union dated 15th December 1964 reiterated the stand to fight out the case of Sri Ansari. In another meeting of the Union dated 28th December 1964 (Ex. W. 10), it was resolved that since the Union had decided to merge with the M.P. Colliery Workers Federation the said Federation be requested to take up the matter in conciliation. It has been urged on behalf of the management that although the union had resolved to dissolve and merge with Federation on 17th November 1964 yet it continued to function as is evident from their own records. As such, it was urged that there was no real merger. The argument is fallacious. There could be no effective merger and effacement of identity until the Federation had accepted the proposal and had taken necessary steps to open a branch at Singrauli. Thus there has been repeated reiteration of the demand by the Colliery Labour Union to fight out the case of Sri Ansari before and after its merger with the Federation and taking up the case of Sri Ansari by the Federation to conciliation was merely a continuation of what the union had decided to do through the Federation. The espousal need only be proved before the date of reference which in this case was September, 1965 and which has been done by ample evidence produced on behalf of the workmen.

As far representation there is absolutely no ground to deny the representation of the workmen through M. P. Colliery Workers Federation when the Colliery Labour Union, Singrauli has in fact merged with the Federation and is operating through a branch at Singrauli. This Federation is a registered Trade Union for workers of collieries in Madhya Pradesh and under Sec. 36 Cl (a) I D. Act, workmen could be represented by an officer of such Union. Sri Gulab Gupta is General Secretary of the Union. The fact that he is an advocate is of no consequence. The Federation is, therefore, allowed to represent. Sri Gulab Gupta can continue to appear and represent the workmen of the colliery. The dispute is held to be an industrial dispute for which this Tribunal has necessary jurisdiction.

(Sd.) G. C. AGARWAL,
Presiding Officer.

Dated the 18th November, 1968.

[No. 5/6/65-LRIL.]

New Delhi, the 3rd July 1969

S.O. 2801.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Chora 7 and 9 pits colliery of Chora Coal Company Limited, Post Office Chora, District Burdwan and their workmen, which was received by the Central Government on the 19th June, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 17 OF 1969

PARTIES:

Employers in relation to the Chora 7 and 9 Pits Colliery of Chora Coal Company Limited,

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers—Mr. S. K. Bhattacharjee, Advocate, instructed by Mr. N. Singh, Personnel Officer.

On behalf of Workmen—Mr. Madhusadan Roy, General Secretary, Asansol Coal Field Workers' Union.

STATE: West Bengal

INDUSTRY: Coal Mines

AWARD

By Order No. 6/117/68-LRII, dated January 18, 1969, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to Chora 7 & 9 Pits Colliery of Chora Coal Company Limited and their workmen, to this tribunal, for adjudication, namely:

“Whether the management of Chora Colliery (7 and 9 Pits) Post Office Chora, District Burdwan was justified in locking out their colliery with effect from the 17th August, 1968 to 7th September, 1968, without any notice and denying work to 183 workers whose names are shown in the Annexure for the period mentioned above? If not, to what relief are these workmen entitled?”

A copy of the Annexure is annexed to this award.

2. The workmen represented by Asansol Coal Field Workers Union filed a written statement. It was stated in the said written statement:

(a) On and from August 17, 1968, the management of the colliery refused to employ 183 workmen, named in the annexure to the Order of Reference, out of its total number of 350 workmen without assigning any reason and such refusal to employ continue till September 7, 1968.

(b) The coal mining industry, at the material time being a public utility service, the management was bound to give notice as provided under Sub-section (2) of Section 22 of the Industrial Disputes Act, 1947, before resorting to refusal of employment, which amounted to lock-out.

(c) The trade union of the workmen raised an industrial dispute against the said illegal lockout. The management sought to counteract the charge by falsely alleging that the workmen had been laid off and had also been offered alternative employment. In these circumstances it was claimed the management was liable to pay full wages to the concerned workmen, during the period of illegal lockout.

3. In the written statement filed by the employer colliery, it was stated in paragraph 4:

“***The employers deny that on and from 17th August 1968, 183 workmen named in the Annexure of the reference were refused employment and/or that the same continued for the 7th and 9th September, 1968.

With reference to the statement made in the said paragraph the employer state that pursuant to a general notice dated 14th August 1968 some 200 workmen of the colliery were laid-off due to removal of severe violations pointed out by the Mines Department, a copy of the same was forwarded to the Union viz. Colliery Mazdoor Congress and Assistant Labour Commissioner (C), Raniganj. It was made clear to the workmen so laid-off that they will be given alternative employment during the period of lay off and were accordingly directed to report to the Attendance Clerk for duties. In spite of such direction the workers in question did not report for duty and as such no alternative employment could be given to them. It is also mentioned that those who reported for duty were given alternative employment during the period of lay off. The management by a subsequent notice dated 22nd August 1968 reminded the workers of their statutory obligations to accept the alternative employment which they did not accept."

The management disputed the allegations of lockout and denied their liability to pay compensation.

4. Of the 183 workmen, named in the list annexed to the order of reference, it is not disputed that the names of workmen against Sl. Nos. 103, 107, 131 are duplications for names against Sl. Nos. 183, 164 and 146. Therefore, I need not consider the cases of workmen named in Sl. Nos. 183, 164 and 146.

5. The cases of five workmen named against Sl. Nos. 18, 113, 114, 131 and 147 have already been disposed of, in terms of a settlement. I need not also consider their cases.

6. It is not also disputed that workmen named against Sl. Nos. 82, 95, 100, 101, 102, 126, 127 and 161 were never laid off or locked out but worked all through. Therefore, I need not consider their cases as well.

7. Barring the cases of these 16 (sixteen) workmen, I have to consider whether the other workmen are entitled to any relief, because of the lockout or lay off. I have already set out the material paragraph from the written statement of the management. In that written statement, there is no averment to the effect that a large number of workmen, named in the Annexure to the order of reference, were not workmen of the employer company at all. Yet then, Shyamal Chakravorty, attendance clerk of the Chora colliery, stated in his evidence that workmen named against Sl. Nos. 2, 4, 10, 11, 13, 14, 15, 19, 20, 38, 39, 41, 46, 47, 49, 53, 61, 65, 66, 73, 75, 77, 87, 93, 94, 97, 99, 106, 108, 121, 129, 134, 138, 152, 154, 155, 156, 157, 158, 163, 168, 169, 171, 177, 178 and 179 were not workmen under the employer company. Mr. Bhattacharjee, appearing for the management, also submitted a list containig 53 names, who according to him were not workmen of the employer company. According to the list Sl. Nos. 23, 33, 40, 48, 68, 83, 114, 125, 152, 159 and 166 not named by witness No. 1, Shyamal Chakravorty, were not workmen although their names appeared in order of reference. Mr. Bhattacharjee also developed a new case not made in the written statement to the effect that 82 workmen name'y Sl. Nos. 1, 3, 5, 6, 7, 9, 12, 16, 17, 21, 22, 26, 27, 28, 29, 31, 34, 35, 36, 37, 42, 43, 44, 45, 50, 51, 52, 54, 55, 56, 57, 57, 58, 59, 60, 63, 64, 69, 70, 72, 74, 76, 79, 80, 81, 84, 86, 90, 91, 95, 96, 101, 103, 109, 111, 112, 177, 120, 122, 123, 124, 126, 127, 130, 133, 135, 136, 137, 140, 141, 143, 144, 145, 148, 150, 160, 162, 170, 172, 173, 175, 176, 180, of the list annexed to the order of reference had not completed one year's of continuous service under the employer colliery and in any event were not entitled to any compensation. There is no reason why I should allow Mr. Bhattacharjee to make a case not pleaded in the written statement and, in course of his argument to improve upon the evidence of his own witness and make a new case himself unsupported by evidence.

8. Before I proceed further, I turn to a preliminary objection very seriously argued by Mr. Bhattacharjee. He submitted that the first question for my consideration was whether the management was justified in locking out the colliery with effect from August 17 to September 7, 1968, without any notice. Since lockout was denied by the management the onus was upon the workmen to prove lockout. In this case the workmen did not led any evidence either oral or documentary. He, therefore, submitted that in the absence of evidence the case for lockout should fail and if that case failed, the workmen would not be entitled to any relief at all. It is true that the concept of lockout is essentially different from the concept of lay off. So, when closure amounts to a lockout, it would be impossible to bring it within the scope of lay off under Section 3(kkk). Even then there are certain points of resemblance between lay off and lockout, namely, (i) both lay off and lockout are of temporary nature and both arises out of existing

emergency though the nature of emergency in each case is different and (ii) both in lay off and lockout the relationship to employment is suspended and not severed.

9. Even in the written statement filed by the workmen, it appears, there was not a complete closure of the colliery from August 17 to September 7, 1968. It would be difficult to characterise the period as a period of lockout or closure. What really happened was, according to the pleading, 183 workmen were refused employment. Therefore, the instant case was more of the nature of a lay off than of a lockout. Question for my consideration is if there was a lay off, is it possible for me to consider that, regard being had to the term of reference made to this tribunal.

10. Now, the jurisdiction of a tribunal is limited to consideration of matters referred to the tribunal and to no more. At the same time, it is well known that a pedantic interpretation should not be given to an order of reference and a real industrial dispute stifled by such interpretation. The tribunal has, however, no power to extend the scope of the reference and to import therein matters not referred to. Since lay off is not lockout, it would be difficult to decide lay off when the reference is made on a question of lockout. In the instant case, however, I need not emphasise upon technicalities and throw out the reference on the preliminary ground. The reference calls upon me to decide (1) Whether the management was justified in locking out their colliery and in denying work to its workmen. Even if I cannot pronounce any opinion on lockout, I may pronounce my views on the denial of work to the workmen. This denial may be on the basis of lockout or lay off. That is why I over-rule the preliminary objection in the form urged by Mr. Bhattacharjee.

11. Mr. Bhattacharjee next argued that the Directorate General of Mines Safety pointed out multiple defects in the winding machinery system of the colliery and threatened drastic actions, unless repairs were effected. They are the documents marked XX and YY for identification, because they could not be formally proved. Thereupon, about 200 workmen were laid off, with effect from August 17, 1968, as evidenced by Ext. 7, copy of a notice sent to the Regional Labour Commissioner, in the following language:

"Under Rule 75-A of the Industrial Dispute (Central) Rules 1957 we hereby inform you that we have Laid-Off 200 out of a total of 340 workmen employed in the establishment with effect from 17th August 1968 for the reasons explained in the Annexure. An arrangement will also be made to provide them with alternate job for which they are being asked to report for duty to the attendance clerk.

Such of the workmen concerned as are entitled to compensation Under Section 25-C of I.D. Act will be paid compensation due to them.

ANNEXURE

Removal of violations pointed out by mines Deptt. i.e. repair of Head-Gear, Rope, Pulleys, Winder, etc. etc."

He also argued that during the period of lay off, workmen were asked to report for alternative jobs on pain on losing lay-off compensation and in proof thereof he relied upon Ext. 13, which I set out below:

"A* per the notice dated 14th August, 1968, the workers of this Colliery were asked to report the Attendance Clerk for alternative job. This is to inform you that the Company is not liable to pay any lay-off compensation to those workers who are not reporting for alternative job as per Section 25E of I.D. Act."

Lastly, he relied upon notice, dated September 7, 1968 (Ext. 14), by which lay off was ended and workmen were called back to duty.

12. I shall proceed on the basis that there was no lockout but workmen of No. 7 & 9 Pits Chora Colliery were laid off between the period from August 17 to September 7, 1968. That seems to be the more reasonable interpretation of the pleadings. I shall also proceed on the theory that the laid off was made for repairing and break-down of the machinery and was within the meaning of Section 2 (kkk) of the Industrial Disputes Act:

"Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power, or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment

to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched;"

Now, Section 25E of the Industrial Disputes Act provides:

"No compensation shall be paid to a workman who has been laid-off--

- (i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment, does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;
- (ii) If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- (iii) if such laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment."

The question for my consideration, therefore, is whether Ext. 11, notice of lay off, really offered alternative job to the laid off workmen. I have already set out the language of Ext. 11. That, in my opinion, does not subserve the purpose of Section 25E of the Industrial Disputes Act. It is not stated (i) where the alternative employment was offered, (ii) what sort of alternative employment was offered and (iii) at what wages. That being the position the liability of the employer to pay compensation for lay off arose and continued. The management cannot escape by showing that the alternative employment was not accepted by the workmen. I need notice in this context, the evidence of Sudhir Kumar Ghose, Overman in Chora colliery. He stated, 'the Manager directed employment in alternative jobs like wagon loading, earth cutting in the expansion of the depot and in work in haulage pumps'. He could not, however, say how many loaders could be absorbed in wagon loading. I do not also find that any of the 183 workmen named in the order of reference were engaged in earth cutting or work in haulage pumps. Therefore, without more, I am not in a position to say that they were offered work of previous experience and skill. He does not also say at what wages they were asked to accept alternative jobs.

13. Mr. Bhattacharjee next argued, if I disbelieve the offer of alternative employment, only 23 workmen would become entitled to compensation, namely, Sl. No. 8, 24, 25, 30, 62, 67, 78, 104, 105, 110, 115, 116, 118, 119, 128, 132, 139, 142, 153, 165, 167, 174 and 181. I have already observed that I am unable to accept the story that a number of workmen accepted alternative jobs, a large number of workmen were not working in the employer company and also that a very large number had not completed one year's service. Mr. Bhattacharjee strongly relied upon Ext. 10, Wage Register in form 'B' so as to prove that a large number had not completed one year's continuous service. I have given reasons why I am not prepared to place any reliance on this new development introduced in the case pleaded. It is true that formal proof of Ext. 10 was dispensed with but that would not *ipso facto* prove correctness of Ext. 10. I am not impressed by Ext. 10 and I am not prepared to proceed on that basis alone.

14. In the result, excepting for Sl. Nos. 18, 113, 114, 131, 147, 148, 164 and 183, and also excepting for Sl. Nos. 82, 95, 100, 101, 102, 128, 127 and 161, the rest of the workmen named in the order of Reference are entitled to lay-off compensation under Section 25C of the Industrial Disputes Act.

This is my award.

(Sd.) B. N. BANERJEE,
Presiding Officer.

Dated June 13, 1969.

ANNEXURE

List of the workers Locked out in Chora Colliery.

1. Lal Chand Shau, Miner.
2. Babulal Jaiswara, Dresser.
3. Din Dayal Gope, M/Driver.
4. Bhuseswar Singh, M/Helper.

5. Arjun Singh, M/Helper.
6. Kashim Mia, S/Trammer.
7. Inar Min Hajan, Loader.
8. Khedu Mallah, Loader.
9. Binha Chal Keot, Loader.
10. Bansi Benla Sonar, Loader.
11. Pancham Jaiswar, Loader.
12. Sethu Jaiswara, Loader.
13. Enardeo Rajbhar, Loader.
14. Lochan Loahar, Loader.
15. Sulekha Jaiswara, Loader.
16. Sahadeo, Loader.
17. Chedi Passi, Miner.
18. Matadin Passi, Loader.
19. Parahu Jaiswara, Loader.
20. Jattadin Passi, Loader.
21. Bachai Passi, Loader.
22. Dinai Passi, Miner.
23. Hamman Rajbhar, Loader.
24. Chotolal Passi.
25. Jullu Harijan, Loader.
26. Lal Mahan Kahar, Loader.
27. Bisarjan Harijan, Loader.
28. Sukh Mangal Harijan, Loader.
29. Kataru Jaiswara, Loader.
30. Gopi Saha, Miner.
31. Lal Chand Harijan, Loader.
32. Chouti Harijan, Loader.
33. Ramlalak Keot, Loader.
34. Agnoo Koir, S/Trammer.
35. Ram Raj Kairi, S/Trammer.
36. Sava Ram Lohar, M/Helper.
37. Haricharan Moonia, S/Trammer.
38. Panu Keot, S/Trammer.
39. Lachhu Ram, U. G. Trammer.
40. Brijnarayan, U.G. Trammer.
41. Ramparak Kairi, U.G. Trammer.
42. Ram Asray Kahar, U.G. Trammer.
43. Ram Lakhan Pasi, U.G. Trammer.
44. Kameswar Pd. U.G. Trammer.
45. Ramdular Passi, U. G. Trammer.
46. Ram Bharas Gore, U.G. Trammer.
47. Rambali Gamari, U.G. Trammer.
48. Salban Harijan, L.
49. Nunkka Rajbhar, U.G. Trammer.
50. Suraj Kairi, U.G. Trammer.
51. Dular Katri, U.G. Trammer.
52. Ramdeo Kairi, U.G. Trammer.
53. Ramshan Katri, U.G. Trammer.
54. Ajodhay Kairi, U.G. Trammer.
55. Ramsarup Keot, U.G. Trammer.
56. Merai Kurmi, U.G. Trammer.
57. Babulal Katri, U.G. Trammer.
58. Mangroo Gope, U.G. Trammer.
59. Shib Dayal Roy, U.G. Trammer.
60. Munilal Nonia, S/Trammer.
61. Rarinath Raibhar, Loader.
62. Harilal Raibhar, Loader.
63. Ramshankar Raibhar, Loader.
64. Raburam Gope, Loader.
65. Kedar Deo, Loader.
66. Sibadar Harijan, Loader.
67. Mahendra Harijan, Loader.
68. Lalhart Harijan, Loader.
69. Ramashis Gupta, Loader.
70. Kashi Harijan, Loader.
71. Bideshi Harijan, Loader.
72. Ramdas Kr. Loader.
73. Knochari Harijan, Loader.
74. Chandari Harijan, Loader.

75. Sonar Harijan, Loader.
76. Bajnath Harijan, Loader.
77. Ram Behari Harijan, Loader.
78. Nirmahi Kahar, Miner.
79. Sarju Dhari, S. Trammer.
80. Baleswar Mahto, S. Trammer.
81. Narayan Gope, S. Trammer.
82. Shankar Nonia, E. Khalasi.
83. Bihari Harijan, Loader.
84. Ramdeo Dusad, Loader.
85. Kamal Rajbhar, Loader.
86. Shri Kanta Das, M/Driver.
87. Shriram Kairi, Miner.
88. Kesho Kurmi, Miner.
89. Lakhan Harijan, Loader.
90. Ganesh Harijan, Loader.
91. Dawarka Mahto, Loader.
92. Baiju Mahto, S. Trammer.
93. Pannu Harijan, Loader.
94. Fatik Charan, W. E. Kh.
95. Anil Lo., W. E. Kh.
96. Hira Munia, U. G. Trammer.
97. Teku Jeswara, Loader.
98. Kassi Rajak, U. G. Trammer.
99. Theri Nunia, S. Trammer.
100. Bodi Manjhi, P/Kh.
101. Mahadeb Bouri, B/Kh.
102. Sukha Bouri, Dresser.
103. Sitaram Keot, S. Trammer.
104. Bansi Bhar, Miner.
105. Sasant Rajghar, Loader.
106. Jnderdeo Kairi, Miner.
107. Mahadeb Harijan, Miner.
108. Leda Rajbhar, Miner.
109. Pravu Harijan, Miner.
110. Ramdeo Passi, Loader.
111. Jogeswar Passi, Loader.
112. Chedi Lal Rabidas, Loader.
113. Ram Sarup Jadav, Loader.
114. Bishu Ram Passi, Loader.
115. Chingu Passi, Loader.
116. Hublal Passi, Loader.
117. Gotal Passi, Loader.
118. Dulari Pasi, Loader.
119. Motilal Pashi, Loader.
120. Gangadin Jadav, U.G. Trammer.
121. Sana Bouri, Onsetter.
122. Munshi Yadab, S/Trammer.
123. Rajkumar Mahato, U.G. Trammer.
124. Narayan Thakur, U.G. Trammer.
125. Kurni Bouri, M.L.K.
126. Babulal Majhi, B. Fireman.
127. Naku Mandal, W.E. Kh.
128. Fatik Ch. Routh, Onsetter.
129. Sasadhar Gharul, Onsetter.
130. Janki Thakur, U.G. Trammer.
131. Sarju Pashi, Loader.
132. Jagadish Rabhar, Explosive.
133. Fodar Passi, Miner.
134. Ramharak Rarijan, Miner.
135. Biswanath Rajbhar, Loader.
136. Dinanath Rajbhar, Loader.
137. Rampati Rajbhar, Loader.
138. Jumri Rajbhar, Loader.
139. Ambika Rajbhar, Loader.
140. Rambrich Rajbhar, Loader.
141. Chenurpat Rajbhar, Loader.
142. Siaram Passi, Loader.
143. Ramdhari Harijan, Helper.
144. Majhi Jatswara, Loader.

145. Kamal Yadav, Loader.
146. Sarjoo Passi, Loader.
147. Banshi Lal Passi, Loader.
148. Bundalay Bhuiya, Loader.
149. Jogi Rajbhar, S.T.
150. Jagpat Passi, Loader.
151. Bhagabati Passi, Loader.
152. Lakhan Mandal, Loader.
153. Ram Shankar Mudi Ex.
154. Ramboli Moonla.
155. Sukhur Bourl, Fireman.
156. Deonath Harijan, Miner.
157. Biswanath Ram, Miner.
158. Farai Sahu, M. Kattar.
159. Magan Rahbhar.
160. Matadin Passi, Loader.
161. Dukhan Mia, Fireman.
162. Bimal Rajbhar, Loader.
163. Chaitar Mahato, Trammer.
164. Mahadeb Harijan, Miner.
165. Chilar Harijan, Miner.
166. Ramdeo Rajbhar, Loader.
167. Raj Narayan Rajbhar.
168. Jagnarayan Ram.
169. Ramboli Passi, Loader.
170. Bachhu Kurmi, Loader.
171. Ramraj Jaiswara, Loader.
172. Udaya Harijan, Loader.
173. Sudarsan Jaiswara, Loader.
174. Makhan Munla, Loader.
175. Sukhari Noonla, Loader.
176. Timal Nunta, Loader.
177. Sukhar Passi, Loader.
178. Samchar Harijan, Loader.
179. Thakri Harijan, Miner.
180. Rajdeo Harijan, Loader.
181. Biswanath Harijan, Loader.
182. Ram Saran Keot, Miner.
183. Sitaram Keot, S/Trammer.

[No. 6/117/68-LRII.]

New Delhi, the 4th July 1969

S.O. 2802.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Chora Colliery No. 7 and 9 Pits, Post Office Chora, District Burdwan and their workmen, which was received by the Central Government on the 24th June, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 24 of 1969

PARTIES :

Employers in relation to the Management of Chora Colliery No. 7 and 9 Pits,

AND

Their workmen.

PRESENT :

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES :

On behalf of Employers—Shri S. K. Bhattacharjee, Advocate.

On behalf of Workmen—Shri Madhusudan Roy, General Secretary, Asansol Coal Field Workers Union.

STATE: West Benegal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/106/68-LRII, dated February 25, 1969, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) referred the following industrial dispute between the employers in relation to the management of Chora Colliery No. 7 and 9 Pits and their workmen, to this tribunal, for adjudication, namely:

"Whether the management of Chora No. 7 and 9 Pits, Post Office Chora, District Burdwan was justified in dismissing Shri Fatik Chandra Routh, Onsetter with effect from 16th August, 1968. If not to what relief is he entitled?"

2. The workmen, represented by the Asansol Coal Field Workers Union, filed a written statement. It was stated in the said written statement that the concerned workman was an Onsetter employed in Chora Colliery No. 7 and 9 Pits and that, on July 24, 1968, at about 4 P.M., while the workman was on duty at No. 7 pit, one loaded coal tub, bearing No. 62, fell out of the cage while being raised. The cause of the fall was alleged, in the written statement, to be:

"this was a very old tub and its sides had flattened and in the process of its raising by the cage, the mechanical catch some how lost its hold and as a result the tub slipped out of the cage."

It was further alleged in the written statement that the workman had taken all precautions to ensure that the tub stood properly held by the catch, before giving signal for the raising and was in no way negligent in the performance of his duty. The fall was described as caused by mechanical failure, being accidental in nature. The further case pleaded was that the management arbitrarily issued a charge-sheet against the concerned workman and in spite of explanation submitted by the workman directed his dismissal from service. The order of dismissal was characterised as based on no material whatsoever. The findings of the enquiry officer were described as insufficient and perverse. In these circumstances, claim was made on behalf of the workmen for reinstatement of the concerned workman with back wages.

3. The management also filed a written statement, in which it was pleaded, in paragraph 4 and 5, as follows:

"4. **the Employers state that on 24th July 1968 at about 4 P.M. in the First Shift Sri Phatik Routh, the workman concerned while on duty as the Onsetter gave signal to raise the 62nd loaded coal tub without making sure that the catches of the tubs were holding properly and as a result of this negligence on the part of the workman the said coal tub fell out of the cage while it was being raised. The Employers deny the statement and allegations made that the tub was old and its sides had flattened and that in the process of its raising by the cage, the mechanical catch some how lost its hold and as a result the tub slipped out of the cage.

5. That the employers** state that the workman concerned took no precaution to ensure the holding of the catch of the cage and it was entirely due to his negligence of duty and callousness that the coal tub fell out of the cage while being raised causing damages to the properties of the Employers and endangering the live of other workmen at No. 7 shaft level and a charge-sheet was issued against the workman on 24th July 1968 to that effect."

It was further stated in the written statement that the workman filed a reply to the charge-sheet which was found unsatisfactory. Thereafter, a departmental enquiry was caused to be held and one S. C. Jha was appointed as enquiring officer. In paragraph 8 of the written statement it was stated:

"***all opportunity was given to the workman to defend his case and he fully participated in the enquiry by cross examining the witnesses produced by the management. The defendant however did not produce any witness on his behalf. **That during the enquiry the charge levelled against him was proved beyond all reasonable doubt. The enquiring officer in his finding held the workman guilty of the charges and recommended for his dismissal."

The management agreed with the enquiry report and an order of dismissal was made upon the workman concerned.

4. This is, in short, the nature of the pleadings on the basis of which I need proceed.

5. On behalf of the management the enquiring officer S. C. Jha himself gave evidence. He is a stranger to Chora colliery No. 7 & 9 Pits. He is employed as the Manager of Monoharbahal Colliery but because there is one Director common both in Chora colliery and in Monoharbahal Colliery and because that Director had asked him to hold the enquiry, he came to enquire into the misconduct of the concerned workman. There was no charge of bias or incompetency levelled against Mr. Jha and therefore I cannot find fault with his appointment as the enquiring officer. He proved the records of the proceedings of enquiry and also his report (Exts. 5 and 7). He stated that the concerned workman Fatik Routh refused to put his signature on the records of enquiry proceedings and that fact was noted in a letter written to the workman (*vide* Ext. 6). The other witness examined on behalf of the management was Anil Kumar Chattapadhaya, the head clerk. He proved the service of several notices upon the workman, including the notice of enquiry and the notice of the order of dismissal (Ext. 4 and Ext. 10).

6. The workman Fatik Chandra Routh himself gave evidence. He admitted service of the charge-sheet upon him. The charge-sheet is Ext. 1 and is couched in the following language:

"On 24th July 1968 in I Shift at about 4.00 P.M. while you were on duty at No. 7 Pit you gave a signal to raise 62nd loaded coal tub without seeing that the catches are holding the tub with the result that loaded coal tub fell out of the cage while it was being raised. This is due to your negligence in work which caused damage to the company's property and endangered the lives of persons working at No. 7 shaft level.

You are asked to explain within 48 hours of receipt of this letter, why disciplinary action should not be taken against you for the above."

The explanation given by the workman is Ext. 3 and a material portion therefrom is quoted below:

"**That actually I am always sincere and honest to my duty and never did anything wrong during my duty hours which is best known to your kind honour. The charge which has been shown against me is totally baseless and false because I checked/inspected the catches which were actually holding the tub said by you (i.e. 62nd loaded tub). But, the 62nd tub was a big one and I also informed to your kind honour that during the time of any big tub raising the catches do not work properly, which is also best known to you. The tub which fell out of the cage actually for no fault of mine but due to fault of mechanism I think. So, the question of negligence in work does not arise at all. Also, there was cause of fall of the above tub from the cage that there was a heavy jerking.**"

He also admitted service upon him of the notice of enquiry, Ext. 4. He, however, disputed that any enquiry had been held. His version as to what happened on the date of enquiry should better be stated in his own language:

"I attended the office on that day without witnesses, because there was no witness. I found Bhargava Sahib and Jha Sahib were sitting. They merely told me that I knew too much law and was possibly not desirous of serving. I said that I had merely pointed out the defects. Jha Sahib told me that I would not have to work and asked me to go away. On that day, namely, on the date of the enquiry, accepting Mr. Bhargava and Mr. Jha there was nobody else was present in the office. 24 days after the date fixed for enquiry, I received the letter of dismissal."

I am unable to believe in the version of the workman that no enquiry was held. There are several reasons why I am unable to do. In the first place, it was not pleaded in the written statement that no enquiry had at all been held. In paragraph 10 of the written statement all that was stated was:

"The workman submits that there were no material whatsoever for holding the workman guilty of the charges and the enquiry officer proceedings in an arbitrary way has found the workman guilty of the charges and the said findings are insufficient and perverse and the dismissal of the workman is *malafide* and is a glaring instance of victimisation."

Apart from the fact that the pleading is silent on the point, at no point of time, earlier than to-day, did the workman complain that no enquiry had at all been held. If on the date fixed for enquiry he had been turned away without any enquiry, it was expected that he would have written to the management about the fact or would have protested against the dismissal without enquiry, immediately on receipt of the order of dismissal. He did nothing of the sort. Lastly, the enquiry proceedings indicate that not only was the workman present, he participated in the enquiry and cross-examined two witnesses. I have no reason to doubt Mr. Jha, the enquiring officer, on the point that an enquiry was held with notice to the workman in which the workman was present. Thus, the position is that the workman was served with a charge-sheet and that there was an enquiry held with notice to the workman. At the enquiry witnesses were examined on behalf of the management with full opportunity to the workman to defend himself. The workman did not examine any witness of his own.

7. The only questions which remain for me to decide are whether the misconduct, with which the workman had been charged, at all amounts to a major misconduct justifying dismissal and whether the misconduct stood proved by evidence or whether the enquiring officer was perverse in his findings. It has been proved before me that the concerned workman was an Onsetter. The duties of Onsetters are prescribed by Regulation 52(j) of the Coal Mines Regulation, 1957, which I set out below:

"He shall not allow any unauthorised person to handle tubs in or out of the cage. While tubs are being lowered or raised, he shall also see that the catches are holding the tubs properly before signalling the cage or other means of conveyance away. If he notices any defect in the tub-catches, he shall immediately inform his superior official."

The workman Fatik Routh said in his evidence:

"It is my duty to see that the catch did properly hold and then give the signal. Although I noticed that the catch did not properly hold, I gave the signal for raising of the tub, because the wheel shaft had properly caught."

This is certainly not compliance with the regulation set out above. Clause 18(q) of the Standing Orders of the company includes as a misconduct,

"Any breach of the Mines Act, 1952, or any other Act or of any rules, regulations or bye-laws thereunder, or of any Standing Orders."

In the instant case, clause (j) of Regulation 52 was violated. If this had been inadvertantly done, the gravity of the offence might have been minimised. But, admittedly the workman noticed that the catch did not hold but still then took the risk of giving the signal. Therein he was inviting very grave risk not only on himself but to others as well. It further appears that he was not unconscious of the danger. He himself says, "after having given the signal I moved into a distant of about 15'". This moving away indicates that he apprehended danger. The enquiring officer was satisfied on evidence before him that the workman had not taken proper precaution before giving the signal for raising of the tub. He did not also believe in the version that the tubs got mis-shaped and out of size by user and therefore would not fit inside the catches. The evidence before the enquiring officer was sufficient to find the workman guilty of the charge. Since the charge stood proved, since the enquiry was conducted with the formalities required under the law, I cannot interfere with the findings of the enquiring officer. The nature of punishment imposed upon the workman cannot be said to be disproportionate with the misconduct committed.

8. I, therefore, hold that the management of Chora Colliery No. 7 and 9 Pits was justified in dismissing Sri Fatik Chandra Routh, Onsetter, with effect from 16th August, 1968. As such the workman is not entitled to any relief.

This is my award.

Dated the 17th June, 1969.

(Sd.) B. N. BANERJEE,
Presiding Officer.
[No. 6/106/68-LRII.]

S.O. 2803.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the management of East Bhuggatdih Colliery Company (Private) Limited, East Bhuggatdih Colliery, Post Office Jharia (Dhanbad) and their workmen, which was received by the Central Government on the 27th June, 1969.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
DHANBAD**

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE NO. 255 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the management of East Bhuggatdih Colliery Company (Private) Limited, East Bhuggatdih Colliery, Post Office, Jharia (Dhanbad).

AND

Their workmen.

APPEARANCES :

On behalf of the employer.—Shri B. P. Dabral, Chief Personnel Officer.

On behalf of the workmen.—Shri S. K. Mukherjee, Advocate.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, 23rd June, 1969/2nd Asadha, 1891 Saka.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the management of East Bhuggatdih Colliery Company (Private) Limited, East Bhuggatdih Colliery, Post office Jharia (Dhanbad) and their workmen, by its order No. 2/86/67-LRII dated 26th August, 1967 referred to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether having regard to the qualifications and actual performance of duties of Shri Samarjit Choudhury now designated as Lamp Safety Fitter in the East Bhuggatdih Colliery, the demand of the Colliery Staff Association, Begunia, Post office Barakar, District Burdwan, that the said Shri Samarjit Choudhury should be designated and paid as Lamp Cabin Incharge, with effect from the 1st May, 1962 is justified?

If so, to what relief the said Shri Samarjit Choudhury is entitled?"

2. Workmen as well as the employers filed their statement of demands.

3. Shri Samarjit Choudhury (hereinafter referred to as the affected workman) joined in East Bhuggatdih Colliery of the employers as an apprentice in the electrical department on a monthly salary. From 17th June, 1964 he was appointed as a Cap Lamp Fitter on a weekly salary in Category IV. Even now he is working in the same capacity. These facts are not in dispute. The case of the workmen is that when naked lamps in mines were prohibited and Safety Cap Lamps were introduced the affected workman was put incharge of the Lamp Cabin with effect from 1st May, 1962, that since then he has been discharging his duties as a Lamp Cabin Incharge and that the employers victimised him by putting him into weekly pay rolls as a Cap Lamp fitter in category IV. Their claim is that from 1st May, 1962 he should be designated and paid as Lamp Cabin Incharge, having regard to his qualifications and actual duties performed

by him. The employers filed their statement pleading that ever since he started his carrier in the colliery the effected workman worked merely as an apprentice till 17th June, 1964 when he was given an authorisation under Coal Mines Regulations No. 36 appointing him in Category IV of the All India Industrial Tribunal (Colliery Disputes) Award at the wage of Rs. 1.25 per day basic and that he was neither qualified to work as a Lamp Cabin Incharge nor had he worked as such at any time. Workmen were represented by Shri S. K. Mukherjee, Advocate and the employers by Shri B. P. Dabral, Chief Personnel Officer. On admission by the employers, Exts. W.1 to W.27 for the workmen and on admission by the workmen, Exts. M.1 to M.9 for the employers were marked. On behalf of the workmen the affected workman was examined as WW.1 and Exts. W.28 to W.135 and Exts. M.10 to M.14 and Ext. W.30 (a) were marked. The employers examined a witness. No further documents were marked for the employers.

4. The case of the workmen is that the affected workman was qualified to discharge his duties as a Lamp Cabin Incharge and actually is performing his duties as such continuously from 1st May, 1962. This case is flatly denied by the employers. Thus, the case constitutes of two parts, viz. (1) whether the affected workman was competent to work as a Lamp Cabin Incharge and (2) whether he is performing his duties as such continuously from 1st May, 1962.

5.(1) *Competent to work as a Lamp Cabin Incharge.*—Neither in the All India Industrial Tribunal (Colliery Disputes) Award nor in the Coal Mines Regulations, 1957 is there any designation, mentioned as "Lamp Cabin Incharge". But in the Award "Lamp Room incharge is referred to and listed under clerical Grade II in Appendix XVI of Volume II. The affected workman, WW.1 also concedes the position and says that "Lamp Cabin Incharge and "Lamp Room Incharge" mean the same. Therefore, it is to be understood that the claim of the workman is for designating and putting the affected workman as a "Lamp Room Incharge". Regulation 48 of the Coal Mines Regulations, 1957 deals with the duties of a "Lamp Room Incharge". It says that a competent person should be incharge of a Safety Lamp Room. Regulation 2(7) of the Coal Mines Regulations, 1957 defines "competent person" thus:

" 'Competent person' in relation to any work or any machinery, plant or equipment means a person who has attained the age of 21 years and who has been duly appointed in writing by the Manager as a person competent to supervise or perform that work, or to supervise the operation of that machinery, plant or equipment and who is responsible for the duties assigned to him, and includes a shot-firer".

The age of the affected workman being above 21 years is not in controversy. But it is admitted by the parties that he was never "duly appointed in writing by the Manager competent to supervise or perform the work" as a "Lamp Room Incharge". On this ground alone it can be held that the affected workman was not a "competent person" to discharge the duties as a "Lamp Room Incharge". Further, under Regulation 155(5) of the Coal Mines Regulations, 1957, no person shall be appointed as a competent person for the purpose of the Regulation (maintenance and examination of Safety Lamps) unless he holds a Manager's, Overman's or Gass Testing Certificate. On his own showing the affected workman never held any of these certificates. So, he could not also be appointed as a "Lamp Room Incharge". In this connection it should be noted that in para 7 of their written statement the workmen have stated that the affected workman had taken full charge of the Main Lamp Room Station and also a Sub-station where at that time number of lamps increased from 100 to 1500, besides there were 40 Flame Safety lamps. It follows therefore, Regulations 48 as well as 155 of the Coal Mines Regulations, 1957 are applicable. In this view, I cannot agree that a Gass Testing Certificate is not essential because the mine in question is not a gassy. Under Regulation 186(5), in respect of electrical machinery and plant, the competent person shall be an engineer or electrician holding qualifications specified in the Indian Electricity Rules, 1956. The affected workman does not hold any such certificate. For this reason also he was not competent to discharge the duties as a "Lamp Room Incharge". It is true that the affected workman was sent for training at Kilburn and Co. Ltd. and received 3 months training. The certificate in this respect is Ext. W.11. The learned Advocate for the workmen put emphasis on the sentence, "In our opinion the above trainee is of average intelligence and may be put incharge of a Oldham Cap lamp room" occurring in Ext. W.11 and argued that the affected workman was declared competent to be "Lamp Room Incharge." But Ext. W.11 itself says that the training was as a Lamp Room Attendant. That apart, Ext.

M9 is a letter from Kilburn and Co. Ltd. to the Manager of the colliery inviting candidates for the training, in response to which the employers sent the affected workman for training. This letter, Ext. M9 clearly states that the training was for Lamp Room Attendants. M.W.1 was working in Kilburn & Co. Ltd. as a Service Engineer for 16 years till he left the service 1½ years ago. His evidence is that to his knowledge Kilburn & Co. Ltd. did not train "Lamp Room In-charges" in terms of Regulation 48 of the Mines Regulations, 1957 and that the company used to train Lamp Room Attendants and used to issue certificates as Ext. W.11 to those who were entertained at the training centre. He further deposed that the Lamp Room Attendants after receiving the training were placed for general maintenance of lamps in collieries. The witness pointed out that the term Lamp Room Incharge mentioned in their Inspection Reports was a general term and not in the sense mentioned under Regulation 48. According to him the term referred to the person who was actually incharge of the room irrespective of the fact whether he was trained or untrained. The witness himself conducted inspections at the colliery accompanied by the affected workman and in the inspection reports he referred to the affected workman as the "Lamp Room Incharge". But he has clarified that he did not know what was the actual designation given to the affected workman by the management and in general terms he referred to the affected workman as the "Lamp Room Incharge". Thus, the Inspection Report, Ext. W.35 in which the affected workman is mentioned as L.C. Incharge has no significance and it does not prove that he was a "competent person" within the meaning of the Coal Mines Regulations, 1957. Thus, I find that the affected workman was not competent to discharge the functions as a "Lamp Room Incharge".

6.(2) *Performed duties as a Lamp Cabin (Room) Incharge continuously from 1st May, 1962.*—The case of the workmen is that the affected workman is performing his duties as a "Lamp Room Incharge" continuously from 1st May, 1962 inspite of the fact that he was designated as a Cap Lamp Fitter on a weekly salary in Category IV with effect from 17th June, 1964. When he was not a "competent person" within the meaning of Regulation 2(7) of the Coal Mines Regulations, 1957 and admittedly, was not given an authorisation as such, it requires very cogent and strong evidence to prove that he is performing the duties as a "Lamp Room Incharge". The duties of a Lamp Room Incharge are specified in Regulation No. 48 read with Regulations 144, 155, 156, 157 and 186 of the Coal Mines Regulations, 1957. Under these Regulations it is the duty of a Lamp Room Incharge to maintain several registers in addition to ensuring proper maintenance of the Safety Lamps and the Lamp Room. It is stated in the statement of demands filed by the workmen and also deposed by the affected workman, WW.1 that he was maintaining all the registers and performing the duties enumerated in the Regulations. It is stated in para 15 of the statement of demands of the workmen, "on 15th March, 1967 all statutory registers and records which were exclusively maintained and kept in his custody in his office room (at the Lamp Cabin) were lifted away by the management without any consent of the workman and they were then preserved in the Manager's custody". But in his evidence as WW.1 the workman has deposed, "even now I am maintaining the registers prescribed by the Mines Regulations." Whatever that might be, the registers were material proof that they were maintained by the affected workman. But the registers were not called for from the employers. If it is true that the affected workman is maintaining the registers even now, nothing could prevent him from bringing and producing them before the Tribunal. The case of the employers is, as stated in their statement of demands, "the allegation of removal of registers and records by the management was not correct and that no such records were maintained or were required to be maintained statutorily". Exts. W.13 to W.19 are admitted books. Ext. W.13 contains list of deductions made from different workmen on different dates in 1967, and 1968, perhaps for lossing or spolling bulbes, etc. by them, Ext. W.14 is a book showing materials purchased, Exts. W.15, W.16, W.17 and W.18 report books and Ext. W.19 store requisition book. They are stated to have been maintained by the affected workman. But these are not the records mentioned in Regulation 48 which are pleaded by the workmen as being maintained by the workman. According to the workmen the affected workman was incharge of Flame Safety Lamps as well as Safety Cap Lamps. Under Regulation 155 the competent person is required to clean, trim, examine and lock securely all such lamps before they are issued for use. But the affected workman, WW.1 has conceded that he was not attending to Flame Safety Lamps and that he was maintaining the registers only relating to Cap Lamps. Under the same Regulation it was his duty to examine every Safety Lamp on its being returned after use and if he found any lamp to be

damaged or misused to record the nature of the damage or misuse in a bound paged book. Though the case of the workmen is that the affected workman was in full charge of the Lamp Room from 1st May, 1962, the affected workman, WW.1 says that it was in the middle of 1967 that he took full charge of the Main Lamp Room Station and also a sub-station. It is also a duty of the competent person under Regulation 155(2) to perform the duties prescribed under Regulation 147(2) viz. to search every person proceeding below ground and see if he has in his possession any contraband. But the affected workman, WW.1 admits that he has not produced any record to show that he supervised or worked in other shifts than the general shift. His evidence is that for the 3 shifts there were 3 different persons for issuing and receiving lamps and that topping of the lamps was being done by the helpers. Exts. M11, M12, M13 and M 14 are admitted by the affected workman, WW.1. Ext. M11 is addressed to 3 lamp men of the Cap Lamp Room and the affected workman is not one of them. The letter directed the lamp men to issue Cap Lamps from one rack only. Ext. M12 is a general notice directing the Lamp Room attendants to bring to the notice of the Assistant Manager/In-charge the delay in submitting the cap lamps to the Lamp Room by the workmen. The name of the affected workman does not find place in the notice. Ext. M13 is addressed to the affected workman and 2 others as Cap Lamp Attendants, directing them to bring to the notice of the Assistant Manager/In-charge if any cap lamp or safety lamp is not received in time. Ext. M14 is a complaint forwarded to the Agent by some attendants other than the affected workman. The affected workman, WW.1 concedes that some lamps were stolen but he was not given any charge-sheet nor was any action taken against him. On behalf of the workmen a number of documents. Exts. W. 28 to W. 135 are brought on record to show that in all of them the affected workman was referred to as the "Lamp Cabin Incharge". Barring one or two, chits Exts. W. 38 to W.135 do not contain anything to connect them to the affected workman. It is argued that except the affected workman there was no person in the colliery who was "Lamp Cabin Incharge" and as such, all the above chits should be deemed to have been addressed to him. It is true that in Exts. W. 38 to W. 135 "Lamp Cabin Incharge" is mentioned. But, as I have already pointed out, there were more than one attendants at the Lamp Room and the affected workman was not the person solely incharge of the Lamp Room. Emphasis is laid on Exts. W.28 and W. 29 which are certificates issued to the affected workman. Ext. W. 28 is signed by Shri H. K. Sharma as the Manager. Evidently the dates mentioned in it appears to be re-writing after erasing the previous writing. That apart, the certificate states that the affected workman was taking training in the Electrical Department of the colliery as an electric apprentice and that at the time of the certificate he had also to look after the maintenance work of the cap lamps and work as "Lamp Cabin Incharge." Ext. W. 29 is signed by Shri S. P. Mukherjee, an Engineer, stating that the affected workman had been working directly under him as a "Lamp Cabin Incharge." The employers have suggested that these certificates were got signed while the signatories were on transfer. Ext. W. 30 is an application to the Manager from the affected workman contending that he was working as a "Lamp Cabin In-charge" and that, as such he must be given his proper scale of pay. In Exts. W. 31 to W. 37 the affected workman is referred to as the "Lamp Cabin Incharge". From this material the inference is irresistible that the affected workman started working in the colliery as an electric apprentice, after he underwent training at Kilburn & Co. Ltd. was appointed on a regular basis as a Cap Lamp Fitter on the weekly basis at Rs. 1.25 per day basic, was entrusted with some work at the Lamp Room as it was done with others and, being the senior most of such employees working at the Lamp Room, he was addressed as the "Lamp Cabin Incharge". But he neither was designated nor discharged the duties of a "Lamp Room Incharge" as enumerated in Regulation 48 read with Regulations 144, 155, 156, 157 and 186. It seems to me that relying upon the above documents and Exts. W. 28 and W. 29, certificates in particular, the affected workman thought that he could successfully claim his appointment as a "Lamp Room Incharge" with effect from the date since when he was doing some work at the Lamp Room. But mere chits, letters or certificates given to the affected workman, though may give rise to the inference that he worked as such, but cannot be final proof that he has been discharging the duties of a "Lamp Room Incharge" as mentioned in the Regulations. As I have already pointed out, the evidence brought on record is not sufficient to prove that at any time the affected workman was either appointed as a "Lamp Room Incharge" or he discharged the duties of a "Lamp Room Incharge" as detailed in the Regulations I hold accordingly.

7. The workmen had taken the plea that the affected workman was victimised by the employers by appointing him from 17th June 1964 as Cap Lamp Fitter.

There is absolutely no evidence regarding the alleged victimisation. Admittedly, the affected workman as an electric apprentice was started on an allowance of Rs. 25/- per month and immediately before his appointment as a Cap Lamp Fitter he was drawing the allowance at Rs. 75/- per month. It is also admitted that from 17th June 1964 as a Cap Lamp Fitter he was appointed on a daily wage of Rs. 1.25 in addition to dearness allowance, variable dearness allowance, etc. The affected workman, WW. 1 himself has conceded that he was receiving more than Rs. 75/- per month after he was appointed as a Cap Lamp Fitter. Thus, the appointment of the affected workman as a Cap Lamp Fitter was a promotion and it was beneficial for him.

8. The employers had taken an objection in their statement that the dispute in respect of an individual had not acquired the character of an industrial dispute. The dispute involved in the reference was raised before the Conciliation Officer by the Colliery Staff Association, Begunia, P.O. Barakar. The employers did not say why the Colliery Staff Association could not sponsor the dispute of the affected workman. The affected workman, WW. 1 has in his evidence that he was a member of the Colliery Staff Association. It is true that according to law an individual dispute would become industrial dispute only after it is backed by what has been frequently said to be a substantial number of employees of the establishment. The employers did not plead that substantial number of employees of East Bhuggatdih colliery were not members of the Colliery Staff Association. Further, when the affected workman came into the witness box as WW. 1 it was open to the employers to elicit from him in the cross-examination necessary facts to support their objection. But they did not put any question to him in this respect nor did they lead any evidence or bring any material on record. Under these circumstances, I cannot uphold the objection. The objection is over-ruled.

9. As a result of my above discussion, I find that, having regard to the qualifications and actual performance of duties of the affected workman, Shri Samarjit Choudhury now designated as a Cap Lamp Fitter (Lamp Safety Fitter) in the East Bhuggatdih colliery, the demand of the Colliery Staff Association, Begunia, Post Office Barakar, District Burdwan, that the affected workman, Shri Samarjit Choudhury should be designated and paid as Lamp Cabin Incharge, with effect from 1st May, 1962 is not justified and, consequently the affected workman, Shri Samarjit Choudhury is not entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

Presiding Officer,

Central Govt. Industrial Tribunal (No. 2) Dhanbad.

[No 2/86/67-LRII.]

New Delhi 7th July 1969.

S.O. 2804.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of Shri R. B. Mazumder, Arbitrator, in the industrial dispute between the employers in relation to the management of New Ghusick Colliery owned by Messrs Ghusick & Muslia Collieries Limited, Post Office Kalipahari, District Burdwan and their workmen which was received by the Central Government on the 24th June, 1969.

Arbitration Award of Shri R. B. Mazumder, Assistant Labour Commissioner (Central), Asansol in the matter of arbitration in the industrial dispute between the management of New Ghusick Colliery and their workmen represented by Colliery Mazdoor Congress (HMS), Asansol under Section 10A of the I.D. Act, 1947.

ALC's file No. B-1/405(2)/69

Ministry of Labour and Employment File No. 6/89/68-LR.II ALC's

Present:—

Shri R. B. Mazumder, Assistant Labour Commissioner (Central), Asansol & Arbitrator.

Representing Employer:—

Shri M. P. Roy, Group Personnel Officer, M/s., Ghusick & Muslia Collieries Limited, P. O. Kalipahari, District Burdwan.

Representing Workmen:—

None was present on behalf of the union.

The Group Personnel Officer, M/s. Ghusick & Muslia Collieries Limited, P. O. Kalipahari, Districe Burdwan and the General Secretary, Colliery Mozdoor Congress (HMS) Asansol arrived at an agreement on 13th January, 1969 and submitted the same in form "C" appended to the Industrial Dispute (Central) Rules, 1958 agreeing coluntarily to refer the following matter in dispute for any arbitration under Section 10A of the I.D. Act, 1947.

"Whether the management of New Ghusick Colliery owned by M/s. Ghusick & Muslia Collieries Limited was justified in changing the category of Shri Jagadish Paswan, Haulage Khalasi from IV category to I-I as per their notice dated the 11th November, 1968? If not, to what relief is the workman entitled?

The arbitration settlement dated 12.1.69 was duly notified by the Ministry of Labour, Employment & Rehabilitation (Department of Labour & Employment) in the Official Gazette under S. Order No. 6/89/68-LR.I. dated 20.3.69. In the said settlement the parties further agreed that the arbitrator should make his award within a period of six months or within such further time as may be entered by mutual settlement in writing between the parties.

2. The parties were requested to submit their written statement in support of their case before me under letters No. B-1405(2)/69, dated the 14th April, 1969 and the 6th May, 1969. The management submitted their written statement on the 15th May, 1969, but the union did not. The union was given another chance to submit their written statement by the 5th June 1969 under my letter No B-1/405 (2)/69 dated the 3rd June, 1969. The union, however did not submit either their written statement or counter statement on the statement of the management addressed to me and a copy of which was endorsed to the union by the management. The statement of the management set out the fact of the case as well as their contention.

3. The case was fixed for hearing on the 15th May 1969 by me in my office at Asansol. Though both the parties were present on the date but as the union prayed for time for filing their written statement and other documents, the hearing was adjourned to 6.6.69 finally with the consent of the representative of the management and the parties were intimated that no further adjournment will be allowed and the hearing will be proceeded with *ex-parte*, in case either of the parties failed to attend the hearing on the 6th June, 1969. On the 6th June, 1969 the representative of the management only was present but nobody was present on behalf of the union/workmen at the hearing. Therefore the case as well as their contention.

4. In their written statement the management had stated that Shri Jagadish Paswan had been working a Haulage below 75 H.P. as Haulage Khalasi prior to Wage Board Recommendations for Coal Mining Industry came into being, that the management had implemented these recommendations from 1st December, 1967, that Shri Paswan had been placed in category IV and had been drawing his category wage prior to the coming into being of these recommendations, that Shri Paswan was placed in category IV through oversight though he should have been placed in category III as prior to Coal Wage Board Recommendations he was in category IV and he drew Rs. 30 per month in excess as he received Rs. 195 per month instead of his category wage of Rs. 165. It was further added in the written statement that the management gave notice of deduction of extra wage as required under Section 9 A of the I.D. Act, 1947 in time and that the management did not take any vindictive attitude in deducting his wage but it was done as per law.

5. During the hearing the representative of the management pointed out that as a category IV Haulage Khalasi Shri Paswan's basic pay was Rs. 45 per month as on 1.10.66 as can be seen from Wage Register (Ext. M-3) but while fixing category as per Recommendations of the Coal Wage Board the management had wrongly placed him in category IV though these recommendations had stated that the Haulage Khalasi who was in category IV previously should be placed in category III but subsequently at the time of rechecking of the records this error was detected and Shri Paswan was immediately intimated accordingly under their letter No WG/WB/6/223 dated 11.11.1968 (Ext. M.1) and was advised thereunder that he should be placed in category III instead of category IV and the excess pay drawn by him would be recovered. The representative of the management further added that simultaneously a notice dated 11.11.68 in form "E" (Ext. M.2) under Rule 34 of Industrial Disputes Act, 1947 proposing the change of category of the workman was sent to the authorities. It was also stressed that Shri Paswan was not promoted from Category III to Category IV but it was a case of wrong fixation of category and wages due to oversight

It was, therefore, contended that the management was justified in changing the category of Shri Paswan from IV to III.

6. It was seen from the Wage Register (Ext. M. 3) that on 1.10.66 the total emoluments of Shri Paswan, the workman concerned was Rs. 138.91 paise inclusive of Rs. 44.20 paise per month as basic and not Rs. 45/- as stated by the representative of the management during hearing. Thus the total daily emoluments of Shri Paswan as on 1.10.66 was Rs. 5.37 paise and that as a Haulage Khalasi he was in Category IV. As per recommendation at item No. 4 of the "Note on categorisation" and at S/No. 7 of "Appendix V" appearing on page 51 and 45 respectively of the Report of Coal Wage Board for the Coal Mining Industry Vol. II—Appendices, the Haulage Khalasi working a Haulage below 75 H. P. and placed in category IV prior to the Coal Wage Board recommendations came into being should be placed in category III while implementing these recommendations. Under the Coal Wage Board recommendations the daily minimum wage for category III had been fixed at Rs. 5.90 paise in the new scale of Rs. 5.90—15—7.40 for this category. The total daily emoluments drawn by Shri Paswan as on 1.10.66 being Rs. 5.37 paise was below the minimum of the prescribed wage scale for category III, i.e., Rs. 5.90 paise. Thus as per recommendations under chapter VIII on "Adjustments into new scale of Pay" at page 83 of the Coal Wage Board Recommendations Vol—I the daily total emoluments of Shri Paswan will come to Rs. 6.35 paise after giving him 3 increments on the basis of more than 9 years service put in by him in the post. Thus his monthly total emoluments will work out to Rs. 165.10 paise (Rs. 6.35 26 working days) and not Rs. 195/- as he had been drawing from 1.12.67 after the Coal Wage Board recommendations was implemented by the management.

7. Admittedly Shri Paswan was not promoted from category III to IV but was placed wrongly in category IV after the Coal Wage Board recommendations was implemented by the management as contended by the representative of the management and I cannot disbelieve the statement of the management that on subsequent scrutiny of the records they detected this error. The management were within its rights to rectify this error by effecting a change in his category and reduction in wages that was paid to him and recovery of the excess amount paid to the workman concerned on account of wrong fixation of category and pay after giving advance notices as had already been done by them and as were required for altering his service condition as provided in Section 9A of the I.D. Act, 1947.

8. Hence I hold that the management was justified in changing the category of Shri Jagadish Paswan, Haulage Khalasi from IV to III as per their notice dated 11.11.68. The concerned workman, therefore, is not entitled to any relief.

9. However, in view of the item 4 of terms of settlement arrived at in the instant dispute on 13.12.1968 before the Assistant Labour Commissioner (C), Asansol that no recovery of over-payment made in this case shall be made from Shri Jagadish Paswan, the management will not recover the excess amount paid to Shri Paswan.

This is my Award and submitted under Section 10A of the I.D. Act, 1947 to the Central Government.

(Sd.) R. B. MAZUMDAR.

Assistant Labour Commissioner (C),
Asansol

And

Arbitrator

[No. 6/89/68-LRII.]

ORDERS

New Delhi, the 1st July 1969

S.O. 2805.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs T. P. Sao owners of Bejoy and Ghatkuri Iron Ore Mines, Post Office Chaibasa, District Singhbhum

and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Additional Industrial Tribunal with Shri Udayanath Mishra with headquarters at Bhubaneshwar and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether Messrs T. P. Sao owners of Bejoy and Ghatkuri Iron Ore Mines were justified in engaging the workmen as per the list below on piece-rate with effect from the 30th January, 1969.

1. Mankuari Bralk w/o Haraknal Bralk.
2. Subhadra Dasl, w/o Surendro Das.
3. Kistomoni Mundarin w/o Sukhram Mundari.
4. Bhojmati Alda, d/o Gundi Alda.
5. Sukurmani Dasl, w/o Mahendro Das.
6. Sukurmoni Hasda, w/o Jogan Hasda.
7. Sumi Gopin, w/o Bhukan Gope.
8. Fulmoni Loharin, w/o Kuroo Lohar.
9. Menjo Dasl, w/o Bibhisam Das.
10. Lakhmi Sawaya, w/o Bagun Sawalya.
11. Basi,—
12. Gurubai Mundarin, w/o Bidu Mundare.
13. Jasmoti Dasl, w/o Rasika Das.
14. Sukarnoro Dasl, w/o Rattan Das.
15. Subni Kuldi, d/o Charan Kuldi.
16. Gourmani Koila, d/o Sunil Barlo.
17. Shauri Manki, w/o Johan Manki.
18. Chandrabathi Das, w/o Gobardhan Das.

If not, to what relief are the workmen entitled?

[No. 24/24/69-LR-I.]

New Delhi, the 3rd July 1969

S.O. 2806.—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the Singareni Collieries Company Limited, Post Office Kothagudium Collieries (Andhra Pradesh) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And Whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri Mohammad Najmuddin, as Presiding Officer with headquarters at Afzal Lodge, Tilak Road, Ramkote, Hyderabad-1, and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the management of Singareni Collieries Company Limited, Kothagudium was justified in withdrawing the "Test Allowance" of the Ward Boys and Ayahs of Kothagudium Main Hospital with effect from the 1st January, 1968? If not, to what relief are these workmen entitled?

[No. 7/22/68-LR.II.]

S.O. 2807.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Singareni Collieries Company Limited, Post Office Kothagudium Collieries (Andhra Pradesh), and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri Mohammad Najmuddin, as Presiding Officer, with headquarters at Afzal Lodge, Tilak Road, Ramkote, Hyderabad, and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the management of Singareni Collieries Company Limited, Post Office Kothagudum (Andhra Pradesh) is justified in withdrawing the concession of supply of uniforms at 50 per cent rates to female mazdoors of 'B' Power House after the implementation of the recommendations of the Central Wage Board for Coal Mining Industry? If not, to what relief are these female mazdoors entitled?

[No. 7/51/68-LRII.]

S.O. 2808.—Whereas the Central Government is of opinion that an Industrial dispute exists between the employers in relation to the Bhowra Colliery of Messrs Karamchand Thapar and Brothers (Private) Limited, Central Office, Post Office Bhowra, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal (No. 3), Dhanbad, constituted under Section 7A of the said Act.

SCHEDULE

Whether the demand of Shri M. M. Nandi, Mechanical Fitter in Bhowra Colliery of Messrs Karamchand Thapar and Brothers (Private) Limited, Central Office, Post Office Bhowra (Dhanbad) for placing him in Category VI, as per recommendations of the Central Wage Board for Coal Mining Industry, is justified? If so, to what relief is the workman entitled?

[No. 2/209/68-LRII.]

New Delhi, the 7th July 1969

S.O. 2809.—Whereas an industrial dispute exists between the employers in relation to the Bikaner Gypsums Limited, Bikaner (hereinafter referred to as the said Company) and their workmen represented by the Gypsum Mine Workers Union, Bikaner (hereinafter referred to as the said Union);

And whereas the said Company and the said Union have by a written agreement in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration of the person mentioned therein, and a copy of the said arbitration agreement has been forwarded to the Central Government;

Now therefore, in pursuance of the provisions of section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement which was received by it on the 3rd June 1969.

(Agreement)

(Under Section 10-A of the Industrial Disputes Act, 1947)

BETWEEN

Name of parties

Representing Employers—Shri H. Choudhury, Agent, M/s. Bikaner Gypsums Ltd., Bikaner.

Name of parties—Shri A. K. Mukherjee, Personnel Manager, M/s Bikaner Gypsums Ltd., Bikaner.

Representing Workmen—Shri V. N. Gupta, Secretary, Gypsum Mine Workers Union Bikaner.

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri O. Maheepathi, Deputy Chief Labour Commissioner (Central), Government of India, Ministry of Labour, Employment & Rehabilitation, Office of the Chief Labour Commissioner, Shram Shakti Bhavan, Rafi Marg, New Delhi.

- | | |
|--|---|
| (i) Specific matter in dispute | "Whether the demand of the Union that the Pump Attendants and Wireman 'A' should be supplied woollen and cotton uniforms similar to those supplied to Generator Operator-cum-Switch Board Attendants is justified and if so, to what relief are the concerned Pump Attendants and Wireman 'A' entitled to." |
| (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved | M/s. Bikaner Gypsums Limited Sadu Club Building, P.O. Bikaner, Rajasthan.
Gypsum Mine Workers Union, 19, Sethia Quarters, Bikaner, Rajasthan. |
| (iii) Name of the Union, if any, representing the workmen in question | Gypsum Mine Workers Union, 19, Sethia Quarters, P.O. Bikaner, Rajasthan. |
| (iv) Total number of workmen employed in the undertaking affected. | 475 Approximately. |
| (v) Estimated number of workmen affected or likely to be affected by the dispute. | 10 Approximately. |

We further agree that the decision of the Arbitrator shall be binding on us

The Arbitrator shall make his award within a period of six months or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Signature of the parties

Representing Workmen

Sd /- V. N. GUPTA,

Representing Employers

Sd./- H. CHOUDHURY,
Sd./- A. K. MUKHERJEE,

Witnesses:

1. Sd./- U S SUTHAA,
2. Sd./- S. SHARMA.

Bikaner, dated 30th May, 1969.

[No. F. 24(33)/69-LR.I.]

P. C. MISRA, Under Secy.

(Department of Labour and Employment)

ORDER

New Delhi, the 3rd July 1969

S.O. 2810.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs Baney Madhub Mookherjee and Company, Calcutta and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas, the Central Government considers it desirable to refer the said dispute for adjudication,

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

“(1) Whether the action of the management of Messrs Baney Madhub Mookherjee and Company, Calcutta in terminating the services of the following three monthly tally clerks, with effect from 31st March, 1969, was justified—

- (1) Sri A. C. Mookherjee,
- (2) Sri T. P. Choudhury, and
- (3) Sri N. Choudhury.

(ii) If not, to what relief are the three workmen entitled?

[No 28/36/69-LWI-III.]

S.O. 2811.—Whereas the Central Government is of opinion that an Industrial dispute exists between the employers in relation to Messrs Paint Colour and Varnish Company, Calcutta and their workmen in respect of the matters specified in the Schedule hereto annexed,

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication,

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act

SCHEDULE

(i) Whether the action of the management of Messrs Paint Colour and Varnish Company, Calcutta in discharging from service Shri Md. Muslim, Watchman with effect from 10th January, 1969 was justified?

(ii) If not, to what relief is the workman entitled?

[No- 28/37/69-LWI-III.]

C. RAMDAS, Under Secy.

ELECTION COMMISSION OF INDIA

S.O. 2812.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 17th February, 1969 by the High Court of Judicature for Rajasthan at Jodhpur in Election Petition No. 4 of 1967.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Magraj son of Kanhaiyalal Patodia, aged 43 years, Mahajan, resident of Nawalgarh, Dist. Jhunjhunu.

Vs.

1. Radha Krishan Birla s/o Juntharam, resident of Pilani.
2. Morarka Radheyshyam s/o Ram Kumar Morarka, resident of Jhunjhunu.
3. Ghasiram s/o Jaitram, r/o Bas Ghasiram, District Jhunjhunu.
4. Kasiram s/o Medaram Jangid, r/o Khatipura, Khetri.
5. Brij Mohan Loyalka, s/o Rameswar Loyalka, r/o Pilani.
6. Barisal Singh Dhabai, r/o Bibasar, Dist. Jhunjhunu.
7. Mali Ram r/o Regar Mohalla, Nawalgarh.
8. Ramjilal Ne'ora, r/o Sanwal via Singhana.
9. Smt. Sumitra w/o Maliram Tola, r/o Poojariyanka Mohalla, Chirawa.
10. Hoonta Kumhar, r/o Ramgarh, Dist. Ganganagar.

ELECTION PETITION NO. 4 OF 1967; UNDER SECTION 81 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951.

Date of Judgment: February 7, 1969.

PRESENT:

The hon'ble Mr. Justice L. N. Chhangani.

M/s. G. Vasantha Pal, H. C. Thackkar, P. C. Mathur and I. C. Mehta for the petitioner.

M/s. A. C. Mitra, R. P. Bansal, S. K. Jindal and Krishna Murari for respondent No. 1.

Mr. M. L. Galla for the respondent No. 2.

Mr. M. Mridal for the respondent No. 6.

Reportable by the Court

This is an election petition under section 81 of the Representation of the People Act, 1951 (hereinafter to be referred to as the Act) by one Shri Mag Raj Patodia—an elector in the Jhunjhunu Parliamentary Constituency. (to be referred to as the constituency) calling in question the election of Shri Radha Krishna Birla (who will hereinafter be referred to as the respondent) to the Lok Sabha from the constituency in the fourth general elections held in February, 1967. Initially, the petition contained two prayers—

- (i) "That it may be declared that the election of the respondent No. 1 from Jhunjhunu Parliamentary Constituency to the House of the People is void;
- (ii) that it may be declared that the respondent No. 2 has been duly elected to the House of the People from Jhunjhunu Parliamentary Constituency."

The respondent No. 2 is Shri Radhey Shyam Morarka, who was one of the contesting candidates who secured the next highest number of votes. The petitioner impeached in the election petition all the contesting candidates as respondents. The respondent No. 2 Shri Radhey Shyam Morarka in his written statement, filed in reply to the election petition, supported the petitioner in respect of both the prayers. The respondent, however, opposed the election petition and further gave notice under section 97 of the Act of his intention to give evidence to prove that the election of the respondent No. 2 Shri Radhey Shyam Morarka would have been void if he had been the returned candidate, on account of the commission of the corrupt practices. He submitted a recriminatory petition. The respondent No. 2

New Delhi, the 17th June 1969

opposed the recriminatory petition. Subsequently, by means of miscellaneous application No. 57 the respondent No. 2 took the plea that the declaration sought by the election petitioner that the respondent No. 2 was duly elected, could not have been claimed by him and consequently the respondent had no right to file the recrimination petition. By my order of November 15, 1968, I directed that the prayer in the election petition relating to the declaration about the respondent No. 2 as having been duly elected, be deleted. The recrimination petition was dismissed as not maintainable. The election petition thus now stands confined only to the declaration that the election of the respondent is void.

For a proper appreciation of the case, it will be proper to begin by setting out the back ground in which the elections were contested for the parliamentary seat from the Jhunjhunu constituency in the last general elections.

Since the first general elections held in January, 1952 the constituency as constituted and delimited from time to time, had been returning the respondent No. 2 Shri Radhey Shyam Morarka to the Lok Sabha as a congress candidate. In the general elections held in the year 1962 he was opposed by the Swatantra party leader Major Thakur Raghuvir Singh of Bissau (PW/32) who lost to Shri Radhey Shyam Morarka respondent No. 2 by about 3,000 votes only. During his parliamentary career Shri Radhey Shyam Morarka held the office of the chairman of the Public Accounts Committee. It is suggested by the petitioner that as a Chairman of the Public Accounts Committee he had occasion to make some reports on the working of some concerns which are popularly known as "Birla concerns" being either owned or controlled or managed by the Birla family, that is the family consisting of the descendants of Shri Baldeo Das Birla, father of Shri Ghanshyam Das Birla. It is further suggested that these reports were not liked by the leading member of the Birla family and the senior executives of the Birla concerns and they got annoyed with Shri Radhey Shyam Morarka and did not want him to be returned to the Lok Sabha in the fourth general elections. It is stated that the leading members of the Birla family, also described sometimes as "Birla House" and the senior executives of the Birla concerns, therefore, opposed the congress party in Rajasthan in general and Shri Radhey Shyam Morarka in particular. They put up the respondent who is related to the Birla family and is also associated with some Birla concerns. Although the parties are not in agreement as to whether he was an official candidate of the Swatantra party or not, he was certainly associated with the Swatantra party and had its backing. He had also the backing of the Birla House and the officers of the Birla concerns. From the news paper reports which were referred to during examination of the witnesses it appears that the parliamentary seat from Jhunjhunu was treated as a prestige seat being contested by two industrialists and a communist and it acquired a lot of publicity in the press.

There were ten contesting candidates in the constituency who are respondents nos 1 to 10. The polling took place on 15th, 18th and 20th February, 1967. The counting was completed on 23rd February, 1967 and the respondents nos. 1 to 10 secured votes as under:—

Respondent No. 1	.. 1,50,546
Respondent No. 2	.. 1,04,023
Respondent No. 3	.. 70,000
Respondent No. 4	... 4,990
Respondent No. 5	.. 3,278
Respondent No. 6	... 1,729
Respondent No. 7	.. 3,042
Respondent No. 8	... 5,222
Respondent No. 9	.. 4,877
Respondent No. 10	.. 6,620

The respondent (Shri Radha Krishan Birla) having secured the highest number of votes declared elected.

On 24th of April, 1967 Shri Mag Rai petitioner—an elector in the constituency—presented the election petition calling in question the election of the respondent. Having regard to the arguments at the Bar it will be desirable to refer to a few features of the election petition originally filed as also to some

facts leading to the amendments of the election petition from time to time. Although various categories of corrupt practices were alleged in the petition the petitioner did not give full particulars of the corrupt practices. Further, the petitioner produced only one document which is Ex. 56 and no other document. He did not file a list of documents in possession or power of persons other than himself and upon which he relied. In the affidavit filed in support of the allegations and particulars of corrupt practices, he mentioned certain persons as having given information relating to the various corrupt practices as detailed below:—

The information relating to:—

- | | |
|--|--|
| (i) Incurring of expenses beyond the prescribed limit as described in section 123(6) | from Shivrath Singh Vasudeo amongst others |
| (ii) Corrupt practice of publication of false statement as described in section 123(4) | from Damodar amongst others. |
| (iii) Hiring, procuring & use of vehicles for the conveyance of voters as described in section 123(5). | from Satya Narain. |
| (iv) Corrupt practice of bribery under section 123(1) | from Satya Narain Kashiram amongst others. |

The respondent, even without service, appeared in Court on 11th May 1967 and obtained a copy of the attested election petition. The respondent filed application No. 13 of 1967 on 14th December 1967 for early disposal of the case.

The respondents Nos. 5, 8 and 9 remained absent despite service and the election petition was directed to proceed *ex parte* against them. The respondents nos. 2, 6, 7 and 10 could not be served. A good deal of time was taken in effecting service on these respondents. Shri Radhey Shyam Murarka at one stage was served through his Muneem on 25th May 1967. Smt. Sumitra Devi—respondent No. 9, who is daughter of Shri Banwarilal Nathuramka (PW/14) and was also a contesting candidate, filed written statement on June 5, 1967 supporting the prayer of the petitioner for setting aside the election of the respondent.

Respondent filed his written statement on 10th of June, 1967 in which *inter alia* he pleaded that the petitioner did not give full and sufficient particulars of the corrupt practices and, therefore, the allegations relating to them should be struck down.

Respondent No. 2 Shri Radhey Shyam Morarka filed his written statement on 24th June, 1967 in which he set out some more corrupt practices in addition to those mentioned in the election petition. He also produced two annexures marked A & B. Annexure 'A' is a pamphlet containing the statement and allegations to the effect that congress party had conceded defeat to respondent no. 1 in the Jhunjhunu Parliamentary Constituency. That congress and congressmen were supporting and assisting the communists and that communists were traitors. Annexure 'B' is entitled "Be careful of the swindlers" and containing the statement and allegations to the effect that the congress-men were getting printed false and malicious leaflets etc.

Respondent No. 3 Shri Ghasiram also filed his written statement on 24th July, 1967. He also made additional allegations relating to corrupt practices and produced two more pamphlets, marked A & B. 'A' (subsequently exhibited as Ex. PW 11/1) being a pamphlet entitled "Yeh Lal Jhanda Wala communist kon" and 'B' a pamphlet similar to the copy of the pamphlet produced by the respondent No. 2 and marked 'A' by him.

It appears that in order to meet the objections of the respondent relating to want of sufficient particulars of the corrupt practices as also to avall of the allegations of other corrupt practices made in the written statement, the petitioner submitted application for leave to amend the election petition. By the proposed amendment the petitioner proposed to incorporate fuller and better particulars of the corrupt practices having regard to the objection of the respondent in his written statement. He also proposed to introduce fresh allegations about the commission of the corrupt practices by the respondent. This application was opposed by the respondent. Arguments on the application for amendment were heard in part on 17th August but were postponed on a prayer by the petitioner to be resumed on 30th August. In the meanwhile, the petitioner submitted a fresh application in connection with the amendment of the election petition enclosing a

schedule of the draft amendments. The arguments in connection with the objections of the respondent no 1 relating to want of particulars of corrupt practices and the prayer for amendment of the election petition were heard on 30th and 31st August and a detailed order appearing at leaves 14 to 29 of the file containing the notes of the proceedings was passed. The directions in this order were of four kinds:—

- (i) The prayer for amendment by introducing fresh allegations of corrupt practices was rejected.
- (ii) Where the allegations relating to corrupt practice were found lacking in full and sufficient particulars the objection of the respondent was upheld.
- (iii) The amendment of the election petition to incorporate full and sufficient particulars of the corrupt practices having regard to the objection of the respondent No 1 were allowed to be incorporated.
- (iv) However, where the petitioner sought to give clarification in respect of the allegations of corrupt practices which are not sufficient and full and which could not be full and sufficient even after the proposed additions, the prayer for amendment was rejected.

Liberty was reserved to the petitioner to apply for leave to give further and better particulars in respect of the allegations which were held to be lacking in full particulars. The petitioner thereafter submitted an application under O.R. 17, Civil P.C. and under-section 151, civil P.C. to amend the election petitions. This application was opposed and by a further order of this Court dated 19th September 1967 some amendments were allowed and some were allowed. Eventually, the amended election petition was presented in this Court on 3rd October 1967.

In the amended petition, the petitioner has set out his case as follows—

In para 3, the petitioner stated that “the respondent No. 1 stood as an independent candidate; was put up by the house of Birlas, one of the wealthiest business houses of the country who own and/or control and/or manage several companies. The respondent No. 1 is himself a man of considerable means. He is very closely connected with the houses of Birlas. He is the Chairman of Shri Digvijay Woollen Mills Ltd. Jamnagar. Both these companies are owned and/or controlled and/or managed by the house of Birlas. During the course of the election campaign, many top Chief Executive Officers of the several companies of the House of Birlas were brought by the respondent No. 1 to the constituency, and they lived there for over a month and worked for the respondent No. 1. Several leading members of the family of Birlas including Shri Ghanshyam Das Birla, Shri Madho Prasad Birla, Shri K. K. Birla and others also stayed in the constituency and canvassed for respondent No. 1. The best material and human resources of several companies of the house of Birlas were drawn upon by the respondent no.1 for his election campaign. Besides the Chief Executive Officers, hundreds of other Executive Officers and employees of several companies of the house of Birlas were also brought by respondent No. 1 from several places to the constituency for campaigning in favour of respondent No. 1 and they worked for the respondent No. 1. Mention was also made of the use of Dakota Aeroplane for travelling of some of the members of Birlas to and from the constituency in connection with the election campaign as also of the hire of a helicopter for the purposes of the election. It was also stated that more than 200 cars and jeeps were used in the constituency and that he employed several media of publicity for his election propaganda.

In para 4, the petitioner pleaded that the respondent incurred expenditure for exceeding the limit of Rs. 25,000. He set out the details of the expenses in sub-
paras (a), (i), (ii), (iii), (iv) and (b) (c), (d), upto (n). I do not consider it necessary to set out them in detail as the relevant pleadings will be referred to in discussing the issue relating to the expenses.

In para 5, the petitioner put forward an alternative case that “in the event of its being held that the election expenses mentioned in para 4 hereof were not actually incurred by the first respondent but by the aforesaid house of Birlas and/or their said companies, the petitioner says that the election campaign as hereinabove described was conducted entirely for and in the interests of the first respondent by the house of Birlas and the said companies at the instance of and with full knowledge and consent of the first respondent so as to constitute them (house of Birlas and/or their said companies) as the agents of the first

respondent. The petitioner says and submits that in the circumstances, the said expenses were authorised by the 1st respondent which is in contravention of section 77 of the Act."

In paras 6, 7, 8 and 9 the respondent alleged the commission of the corrupt practices of (i) false statement as defined in section 123(v), (ii) hiring and procuring or using of several motor vehicles for the free conveyance of the electors to and from the several polling stations in the Jhunjhunu Parliamentary Constituency as defined in section 123(v) and (iii) corrupt practice of bribery as defined in section 123(i). The necessary details will be given in connection with the relevant issues.

The petitioner filed with the election petition lists from A to J.

The petition was contested by the respondent. The allegations in para 3 regarding the respondent having been put up as a candidate by the house of Biras were denied. It was added that the allegations were irrelevant. The respondent also denied that he stood as an independent candidate. He pleaded that he was a candidate sponsored by the swatantra party, an All India recognised party and that he contended with the symbol "star". He admitted that he was Chairman of Shri Digvijay Woollen Mills Ltd., Jamnagar which according to him, is a company incorporated under law and managed by a Board of Directors including a Director of the Government of Gujarat which holds a large number of shares therein. The respondent added that he is an industrialist and many industrialists were happy with his candidature and interested in his being elected to the House of the People, and that thousands of people irrespective of their caste and position in life worked on their own accord voluntarily to support him, adding that such persons were not legally bound to work for him. He denied having brought the Chief Executive Officers and employees of the several companies in several places in the constituency for canvassing in his favour. He denied the use of more than 200 cars and jeeps and pleaded that he kept three jeeps and that expenditure incurred in lieu thereof had been duly shown by him in the election return.

The allegations in para 4 relating to expenses were denied and detailed replies in connection with the various items were given. Without giving further details it may be mentioned that he denied the allegations made in the various paragraphs of the election petition.

On these pleadings the following issues were framed:—

- 1 Whether the petitioner is an elector in Jhunjhunu Parliamentary Constituency, and as such, competent to file the present petition.
2. Whether respondent No. 1 incurred or authorised the expenditure of Rs. 22,000 as alleged in para 4(a)(i), of Rs. 5,000 as alleged in para 4(a)(iii), of Rs. 5,000 as alleged in para 4(a)(iv), of Rs. 26,000 as alleged in para 4(b), for items Nos. i and ii (except items Nos. 3, 6 and 7) of petrol and mobil oil as alleged in para 4(k), for items Nos. 1 to 59 (except item No. 32), mentioned in List "D" and as alleged in para 4(a) for expenses with regards to persons mentioned in lists 'A' and 'C' and as alleged in para 4(f), for messes as alleged in para 4(h) and List 'G', for meetings as alleged in para (j) and List 'I', of Rs. 50,000 as alleged in para 4(i) and of Rs. 75,000 as alleged in para 4(n) of the petition and thereby incurred or authorised expenditure in excess of Rs. 25,000 between 13th January, 1967 and 23rd February, 1967 for his election?
- 3 (a) Whether the statements alleged to have been made by respondent No. 1 as alleged in para 6 amounts to statements of facts in relation to the personal conduct of respondent No. 2 so as to furnish the basic requirements of corrupt practices as defined under section 123(4) of the Act?
- (b) And, if they do, whether they were so made by respondent No. 1 and/or Shri D. P. Mandalia with the consent of respondent No. 1 and whether he and/or Shri D. P. Mandalia believed them to be false or did not believe them to be true and whether they were reasonably calculated to prejudice the prospects of election of respondent No. 2?

4. Whether respondent No. 1 on 15th February, 1967 used jeeps and cars bearing Nos. DLI 4958, MPF 1381, DLJ 8401 and RJP 1128 for conveying electors to polling station at Jhunjhunu and whether respondent No. 1 used a truck bearing No. RJP 986 for conveying electors to polling station at Khetri. Whether respondent No. 1 on 18th February, 1967 used 2 jeeps bearing Nos. BRN 6580 RSL 610 for conveying electors to polling station at Surajgarh and jeeps bearing Nos. RSL 5981, MPF 1854, MPF 1855, RJP 873 for conveying voters to polling station at Sihal, and jeeps bearing Nos. RJP 986, RJP 1091, RJP 909 and also buffalo carts for conveying electors to polling station at Badagaon and jeeps bearing Nos. MPF 1857, MPF 1809, MPF 1803, RSL 6630, RSL 6543 and RJP 980 as also a cycle cart for conveying electors to the polling station at Rajgarh.
5. Whether respondent No. 1 paid a sum of Rs. 500 to Laxman Jat of Sihal on or about 9th February, 1967 for inducing electors of village Sihal to vote for him and whether such payment to Laxman Jat amounted to a corrupt practice as defined under section 123(i).
6. Whether respondent No. 1 promised at a meeting held at village Papurna on 31st January, 1967 to Shri Bhagwandass that he would pay a sum of Rs. 500 to him and some land in consideration for him to vote and to induce others to vote as alleged in para 9(i) of the amended petition and whether such an allegation amounts to corrupt practice?
7. Whether the election of respondent No. 1 is void?
8. Whether respondent No. 2 would have obtained a majority of valid votes but for the votes obtained by respondent No. 1 by corrupt practices?
9. Whether the affidavit filed by the petitioner is not in accordance with law; if so, to what effect?
10. If the verification of the petition, as also of the schedule, annexures and lists accompanying the petition, is not in accordance with law, if so, to what effect?

Both the parties joined in request for permitting them 15 days time for filing the list of witnesses in relaxation of Rule 13 of the High Court Rules in regard to Election Petitions (hereinafter called the Election Rules). The petitioner filed his list of witnesses on 5th December, 1967 in which he cited as many as 350 witnesses several of whom were from outside the State. The petitioner also submitted four applications for issue of commission for witnesses on December 8, 1967, December 17, 1967, January 8, 1968 and September 24, 1968 in all for examination of 53 witnesses at 12 places. It may be observed in passing that majority of the witnesses are stated to have been connected with the election campaign of the respondent. Finding the question of issue of commission in an election petition a difficult and intricate one and having regard to the facts (i) that the right under adjudication is of political nature and (ii) that the election petition is expected to be decided within a period of six months; I directed the petitioner, in the first instance, to obtain summonses for witnesses at the places outside the State to see whether the witnesses appear in the Court or express their inability to appear in Court and claim production under the provisions of the Civil P. C. I had also in mind that if the witnesses appear in Court it would be conducive to the interest of justice as I would be in a position to judge the demeanour of the witnesses. The application for issue of commission were, however, kept pending. In compliance with this direction of the Court the petitioner obtained summonses for only 25 witnesses. It is significant that he did not obtain summonses amongst others for Shri Sanwar Mal Khetan that is S. P. Khetan of S. M. Khetan, Shri Jhabhar Chand Dhariwal or J. C. Dhariwal, Shri D. P. Mandaila and Shri M. P. Mista. Summonses were issued for other witnesses but leaving aside a very few, most of them did not appear and some of them appeared through counsel and expressed their inability to appear in Court and give evidence. The applications for issue of commission were again pressed before me on the 10th of May 1968 but after the conclusion of the arguments the counsel for the petitioner made an application suggesting *inter alia* that the question of issue of commission might be decided after the evidence of the petitioner and his material witnesses. After the examination of 32 witnesses of the petitioner

the petitioner, on 24th of September, 1968, submitted one application for examination of three witnesses on commission, for reasons given in my order dated 26th September, 1968, the application was rejected. In doing so, I relied upon what I consider a sound-premise that an exercise of discretion in availing an undue prolongation and the continuance of the proceedings in an election petition cannot be an abuse of discretion since the public interests as well as the private interests of the litigants demand that the election contest proceedings should be completed as early as possible consistent with justice and orderly process. This has been given statutory recognition in section 86 of the Act which provides that "every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial." After the examination of three witnesses coming from outside Rajasthan, namely, Shri B. N. Sinha, (PW/1), Shri J. N. Manchanda (PW/2) and Shri Jotish Umanga Rai (PW/3) but before the commencement of the statement of the petitioner himself the petitioner filed miscellaneous application No. 21 of 1968 on 5th August, 1968 in which he is stated to have learnt about the correspondence in connection with the election of the respondent in possession of one Shri Chandra Shekhar, a Member of the Rajya Sabha. The petition contained a prayer for adding Shri Chandra Shekhar in the list of witnesses for examination and for producing the correspondence. It is unnecessary to refer to the other prayers contained in this application. Later on four separate applications in connection with prayer, in this application were filed, the application No. 25 of 19th August, 1968, being for permission to amend or add to the list of witnesses by adding the name of Shri Chandra Shekhar. The prayer for adding Shri Chandra Shekhar in the list of witnesses for examination in Court could not be allowed, having regard to the provisions of Rule 13 of the Election Rules. Permission was, however, given to the petitioner to obtain the mere production of the documents in the custody of Shri Chandra Shekhar and to enable him to get the documents produced by witnesses already cited in the list, vide order dated 26th September, 1967. In pursuance of this day's proceedings (26th September, 1969) summonses were also issued for Shri Chandra Shekhar's attendance in Court on 9th September, 1968. He himself did not appear. Shri G. N. Sanghi appearing on behalf of Shri Chandra Shekhar produced the file which is marked "B" for purposes of identification.

It may be mentioned here that during his evidence one Shri Banwarilal Nathuramka (PW/14) stating that (i) in the last elections held in 1967, he worked for Shri Radha Krishan Birla at the request of Shri Radha Krishan Birla and Shri Baijnath Birla, his friend, (ii) that he received copy endorsed to him of the letter addressed by Shri Radha Krishan Birla to Shri S. P. Khetan containing the word "Nathuramka" in his hand, and that (iii) in June, 1967, he visited Bombay where the respondent made some payments to him and also entrusted the file relating to the election on account of some apprehension or likelihood of his premises being raided, volunteered to produce the file in Court. This file is marked "A".

Another fact which needs to be mentioned is that one Shri Ganpat Rai Joshi of Bhiwani was summoned with some documents relating to M/s. Rai Brothers or M/s. Rai Publicity, Bhiwani, for December, 1966, to April, 1967. He, however, did not appear. On 7th October, 1968, one Shri Ganesh Dutt submitted an application stating that he had been handed over certain papers by Shri Ganpat Rai Joshi and wanted to produce them in Court. The application was dismissed. Subsequently, the documents were faced to the respondent No. 1 and have been marked U/2/A to E and V/2 for identification.

The petitioner examined 48 witnesses. He produced or got produced 604 documents, out of which 279 were photostat copies. He also got produced one plastic badge and a bunch of rubber balloons marked M-1 and M-2 for identification.

The respondent examined himself and produced 16 witnesses and relied upon 48 documents.

During the course of evidence some documents were put to witnesses in cross examination but in the absence of proper proof they could not be exhibited but were assigned identification marks A to Z, A-1 to Z1, A-2 to Z2 and A-3 to I-3.

On 16th October, 1968, application No. 56 of 1968 was made to exhibit some documents, particularly those forming parts of Files A and B, which were not

exhibited but which were given marks for identification purposes, and the same request was repeated during the course of arguments as well and finally a written application No. 75 of 16th January, 1969, was also filed containing the prayer for exhibiting documents marked in files A and B as also the documents in U/2/A to E and V/2 and various trunk call bills marked Z1 to Z-19 for identification. An application No. 55 dated 16th October 1968 for examining a handwriting expert was also made. The question raised in these applications shall be dealt with at appropriate stages.

It may be remarked at the outset that the learned counsel for the parties, during the course of arguments, made frequent references to the nature and extent of the burden on an election petitioner, the nature of the evidence to be led by him to establish corrupt practices and the applicability of the provisions of section 106 of the Evidence Act in respect of facts within the special knowledge of the returned candidate and his agents and the permissibility of drawing adverse inferences under section 114(g) of the Evidence Act on account of the non-production of material witnesses by the respondent as to the criteria for determining the material witnesses for the petitioner to unfold the case. It will be proper, therefore, to make a few observations as to the guiding principles bearing upon the approach to election proceedings---

(i) The Act expressly prescribes that subject to the provisions of this Act and any rules made thereunder every election petition shall be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. It must follow that the proceedings in an election petition cannot be equated with a criminal trial and the respondent returned candidate cannot be treated as an accused in a criminal case. The returned candidate has to file written statement to admit or deny the allegations made in the election petition. The issues are then framed and in doing so, the admissions made by the respondent have their own weight and the issues merely cover the point of difference between the parties. This is foreign to a criminal trial.

(ii) That the membership of the Union of State Legislature empowering the member to participate actively in the governance of a State or Country is indeed a great privilege (say even a right) acquired under the verdict of the people at an election; yet it must be viewed as a public office of trust and as a matter of effecting the proper status of the individual in the society and one must guard against equating the deprivation of the privilege and the consequent change in the status even though accompanied by disqualifications entailing loss of right to contest elections or to vote for some temporary period on proof of corrupt practices with the imposition of a punishment on an accused on conviction under some penal statute. It must be borne in mind that the right to sit in the legislature as also right to contest and vote are given by the same statute which contains also the provisions relating to corrupt practices and seating of the candidates to maintain purity at elections with a view to sustain healthy democratic practices. It may also be added that the Act itself provides for some electoral offences which also warrants that the corrupt practices have to be considered as distinct from offences. Indeed, it will be proper to remark that the right of an elected representative to sit in the Parliament and participate in the Government has to be matched by a corresponding obligation to secure popular verdict in his favour only by ensuring a valid and legitimate expression of the popular will and to avoid corrupt practices vitiating such public verdict. Therefore, there is no adequate justification for applying strictly and rigidly the principles and notions associated with the trial of accused persons in the trial of election petitions.

The essential civil nature of the trial and the applicability of the relevant provisions of the Evidence Act including the rules relating to presumptions should not be lost sight of. In this view, I am fully supported by the law as laid down in the two latest decisions of the Supreme Court in *Dr. M. Chenna Reddy v. V. Ramachandra Rao* and *anr. (1) and R. M. Seshadri v. V. G. Vasantha Pai (2)*:

In Chenna Reddy's case (1) the Chief Justice speaking on behalf of the Court, observed:

"In this connection the inherent difference between the trial of an election petition and a criminal trial may also be noted. At a criminal trial the accused need not lead any evidence and ordinarily he does not do so unless his case is to be established by positive evidence on his side, namely, his insanity or his acting in self-defence to protect himself, or a plea of alibi to show that he could not have committed the crime with which he was charged. The trial of an election petition on the charge of commission of corrupt practice is somewhat different. More often than not, proof of such corrupt practices depends on the oral testimony of witnesses. The candidate charged with such corrupt practice invariably leads evidence to prove his denial; it becomes the duty of the Court to weigh the two versions and come to a conclusion as to whether notwithstanding the denial and the evidence in rebuttal, a reasonable person can form the opinion that on the evidence the charge is satisfactorily established. We cannot also lose sight of the fact that quite apart from the nature of the charge, the trial itself goes on as if the issues in a civil suit were being investigated into. The petitioner has to give particulars of corrupt practice with details in default whereof the allegations may be ignored; the petitioner has to ask for certain declarations and the procedure before the High Court is to be in accordance with that applicable under the Code of Civil Procedure to the trial of suits with the aid of the provisions of the India Evidence Act. Inferences can therefore be drawn against a party who does not call evidence which should be available in support of his version."

(1) Civil Appeal No. 449 (NEC) of 1968 decided on 17th February, 1968 by the Supreme Court

(2) Civil Appeal No. 1519 of 1968 decided by the Supreme Court.

In Seshadri's case (2) the power of an Election Judge to summon Court witnesses, under certain conditions, was recognised, and it was observed that "the policy of election law seems to be that for the establishment of purity of elections investigation into all allegations of malpractices including corrupt practices at elections should be thoroughly investigated." The court after referring to some payment of money by Krishnaswamy to Kumarswamy garage, his attachment to Seshadri because of his past connection, observed:

"The amount paid was so large that only a candidate would incur that expenses and no supporter."

To say this, however, is not intended to suggest that consequences following the success of an election petition are insignificant or unimportant. They are indeed serious and have some affinity with consequences of panel nature and this consideration has to be kept in view for the determination of the standard of proof.

Now the Evidence Act defines the term "proved" with reference to the requirements of a prudent man, which must of necessity vary with the nature of the proceeding civil, criminal, matrimonial etc. Even in civil proceedings the Privy Council adopted a stricter test for damages in fraud in *W. C. Macdonald v. Fred Lathner and others* (3). So far as the electoral proceedings are concerned, the law is settled by the decision of the Supreme Court in *Jagdev Singh Sidhanti v. Pratap Singh Daulta and others* (4) where the law was laid down as follows —

"It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices of the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches i.e., the commission of acts which the law regards as corrupt practice, and the responsibility of the successful candidate directly or through his agents or with his consent for its practices not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt the petition must fail. The evidence may be examined bearing this approach to the evidence in mind."

The same view was reiterated in a recent decision of the Supreme Court in *Amar Nath v. Lachman Singh and others* (5).

With these guiding principles in mind I now proceed to consider the issues in the case.

Issue No. 1:

The respondent conceded that the petitioner is an elector in the Jhunjhunu Parliamentary Constituency and was competent to file the election petition. Issue No. 1 is, therefore, decided in favour of the petitioner and against the respondent.

Issue No. 2:

Issue No. 2 relates to the controversy about the expenditure incurred or authorised by the respondent in connection with the election exceeding the prescribed limit and indicates the various items of expenditure on which the parties are at variance. It may be mentioned at this stage that the respondent in his election expenses return marked Ex. 289 has shown an expenditure incurred by him in connection with his election at Rs. 16,380.96. The maximum amount of expenditure permissible is Rs. 25,000. It is clear that the petitioner, in order to succeed, has to establish the additional expenditure of Rs. 8,619.04 to exceed the maximum limit. It will be convenient to deal with the case item-wise.

Before considering the specific items, it will be useful and convenient to appreciate generally the case of the petitioner. The petitioner's case was that "the respondent contested election as an independent candidate, and he and his election agent one Shri P. D. Mukheria incurred and/or authorised the expenditure of large sums of money for his election campaign between 15th January, 1967 and 23rd February, 1967. The election expenses of the respondent between these two dates far exceeded the limit of Rs. 25,000 which is the maximum amount prescribed for election expenses for a parliamentary candidate and the respondent thereby contravened the provisions of section 123(6) read with section 77 of the Act."

The petitioner then gave details of the expenditure under various heads in the following sub-paras marked (a), (b) etc. The petitioner thus came forward with a case of an expenditure by the respondent himself.

Of-course in para 3 the petitioner mentioned the names of Birlas and the Birla family and the respondent's association with the house of Birlas. He also averred that the respondent was put up by the House of Birlas and that several leading members of the house of Birlas as also hundreds of employees of the house of Birlas worked for the petitioner's election. Further, in para 5 of the petition the petitioner alternatively pleaded that "in the event only of its being held that the election expenses mentioned in para 4 hereof were not actually incurred by the 1st respondent but by aforesaid house of Birlas and/or their said companies, the petitioner says that the election campaign as hereinabove described was conducted entirely for and in the interests of the 1st respondent so as to constitute them (house of Birlas and/or their said companies) as the agents of the 1st respondent. The petitioner says and submits that in the circumstances, the said expenses were authorised by the 1st respondent which is in contravention of section 77 of the Act."

Para 3, as observed by me in my order dated 30th August 1967, was of-course in the nature of an introductory paragraph and is intended to give the background of the circumstances under which the respondent contested the election. In para 5 the petitioner mentioned that the respondent was put up by the house of Birlas, and the expenditure having been incurred by the house of Birlas and their companies, this should be deemed to have been authorised by the respondent.

Subsequently, as the case developed and the statement of accounts of the Swatantra party in the United Commercial Bank, Pilani, and file marked A and the file marked B were brought on record, it became evident that the Swatantra party was very much in the field sponsoring the case of the Swatantra party candidates including the respondent who was the Swatantra Party parliamentary candidate and other seven Swatantra party assembly candidates; and that the Swatantra party incurred huge amount of expenditure exceeding three lacs of rupees in connection with the election. It also came to notice that the Swatantra

party received donations from the Cement Allocation and Co-ordinating Organisation (CACO) and other donors, may be some Birla concerns. In his attempt to interpret these materials the petitioner came forward with a theory of the facade of the Swatantra party, contending that under some policy decisions of the house of Birlas the officers incharge of the elections of the Birlas the respondent organised the incurring of election expenses in such an indirect manner so as to avoid the consequences of the election expenses through the medium of the Swatantra party as suggested to the respondent in his cross examination (see page 69 question 1). The petitioner's case at the stage of arguments is three fold—

1. Firstly, the respondent himself incurred all the expenses.
2. That, in the alternative, the expenditure was incurred by the Birla group of concerns either directly or indirectly, through the agency of the Swatantra party and the expenditure by them should be deemed to have been authorised by him.
3. That, even if the expenditure was incurred by the Swatantra party the Swatantra party having incurred the expenses exclusively or at any rate mainly for the respondent, the Swatantra party and the members of the Swatantra party should be deemed to be the agents of the respondent and the expenditure through them be treated as having been authorised by the respondent.

For a proper examination of the petitioner's case as developed on the lines indicated above, it will be necessary to consider the role of the members of the Birla family, the Birla concerns and its Executive Officers and employees and the Swatantra party in connection with the election of the respondent. The petitioner, in this connection, besides having relied upon the oral evidence, has placed great reliance upon the documents in two files A and B. The counsel for the respondent joined a serious controversy over the use and the manner and extent of use of the documents in these files.

File "A" was produced in Court by Shri Banwarilal Nathuramka (PW/14) under circumstances which have already been referred to earlier. There were no page numbers when the file was produced and the paging was done in Court only for the convenience of the parties. There are 161 papers in this file. The petitioner's counsel pointed out that out of these papers, 36 consists of letters on printed letter heads, 24 hand-written letters, 64 original letters bearing the signatures of about 35 persons, 2 letters with reference numbers of companies, 2 original telegrams received from telegraph office, 1 letter typed on special type-writer (of Shri G. D. Birla), 1 typed copy of Bank statement of Thakur Raghubir Singh and 1 bill of Hindustan Times, New Delhi, 1 Cyclo-styled copy of Shri P. D. Makharia's signature attested by the Returning Officer, 3 papers containing dates of companies with particulars of amount which can be donated, 3 papers containing lists of proposed names of counting agents, and 2 papers containing details of publicity material sent to Bhadra office on 25th January and 3rd February, 1967. He led evidence to prove a number of documents.

File "B" was produced by one Advocate Mr. Sanghi on behalf of Shri Chandra Shekhar. It also had no page numbers but was paged in Court. It consists of about 600 papers. The petitioner led evidence to prove some documents in these files. After the close of the respondent's evidence, the petitioner's counsel submitted an application No. 56 of 1968 on 14th October, 1968 for exhibiting 25 letters mentioned in the application. It was stated in the application that there are some letters in this file which are either letters in reply to the letters already exhibited while there are others which are referred to in the exhibits. Still others made express reference to one or the other exhibits. It was submitted that the letters accepted and the letters sought to be accepted form chain or chains of correspondence in which each one of them is a link and that in view of the inter-connection with the letters already accepted their internal evidence and by reason of the fact that they are links in the chain or chain of correspondence, these letters stand proved and should be marked as exhibits. This application was directed to be disposed of alongwith the arguments in the case. Subsequently, the petitioner's counsel submitted another application No. 75 of 1968 for exhibiting all the documents in the file A & B as also in U/2/A to E and V/2. The respondent submitted written statement opposing these applications.

I now proceed to examine the question how far the petitioner has succeeded in proving documents in files marked A & B. I will begin with document Ex.

PW42/6. It purports to be a letter from Shri M. P. Birla, Camp Bombay and is dated 3rd January, 1967. In respect of Shri M. P. Birla's signatures Shri Matadin Bagaria (PW/42) states, 'I did not see Shri M. P. Birla writing but I received one or two letters from him and also had occasion to see some letters addressed by him to some of my friends. I am in a position to identify the signatures, and not the hand-writings, of Shri M. P. Birla. I have seen the document Ex. PW42/6. It bears the signatures of Shri M. P. Birla marked A to B'. The counsel for the respondent has vehemently contended that this letter should not be held proved. Stating the case generally with regard to the file itself, the counsel contended that the entire story of Shri Banwarilal Nathuramka about Shri Radha Krishna Birla having handed over the file to him for safe custody, is a sheer concoction. He made the following points in this connection:—

1. The file purports to contain letters mainly received from Shri Mandelaji or copies of letters addressed by Mandelaji to others or copies of letters addressed to Mandelaji. In view of this, the file could not have been in possession of Shri Radha Krishna Birla.
2. There are some pieces of papers in the file regarding which Shri Vasudeo (PW/19) has made some reference. There is nothing in these pieces of papers to show that they are worth preserving.
3. The contents of the file does not show that they can be subject matter of any raid as they neither relate to income-tax, excise, customs, sales tax or any other tax.

The counsel for the respondent suggested that some papers tagged into the file have been put into the possession of the witness by the petitioner and the petitioner has sought their production through him.

4. It was also added that it is not understandable why a man of the status if Shri Radha Krishna Birla should have given any paper or any file only for safe custody to a man of Shri Nathuramka's status. The file is said to have been given to Shri Nathuramka much after the written statement was filed by Shri Radha Krishna Birla in Court. It is also not understandable why Shri Radha Krishna Birla should have preserved such a file when the contents of the file go contrary to his pleas in the written statement.

The counsel criticising the evidence of Shri Banwarilal Nathuramka (PW/14) made a number of points some of them being as follows:—

1. The witness produced Ex. PW 14/1 and stated that the word "Nathuramka" marked A to B is in the hand-writing of Shri Radha Krishna Birla. The witness received several slips which he handed over to Shri Kamal Kabra but two slips Ex. PW14/2 and Ex. PW14/3 remained with him inadvertently due to over-sight. On the basis of the slip marked Ex. PW14/2 he paid Rs. 200/- to Mangilal Mali, who was working under Shri Janardan in the mess even though it has no reference to Shri Radha Krishna Birla's election. According to the learned counsel the witness has preserved these documents with care to produce them in Court. On the basis of the letter Ex. PW 14/1 he identifies the signatures and initials and even the rubber seal impressions of Shri R. K. Birla although he is not in a position to produce any writing, initial or rubber seal. The witness is highly partisan.

- 2 Referring to details of the meetings it was stated "it is difficult for a man who is educated upto 2nd class only to remember dates and exact amounts after such a long period of 1½ years after the election unless he has been tutored before making the statement."

3. Referring to his general arguments with regard to file "A" it was submitted that he comes forward with a cock and bull story.

4. On the basis of his answers in connection with cloth business it was pointed out, in the first instance the witness tries to be a business man. Then in cross examination it is found that he is neither a salaried man nor a partner or proprietor of any business. The witness is not therefore trust-worthy.

5. Referring, to his statement relating to his talk with the petitioner on 16th February, 1967 in relation to the register containing entries of election expenses the learned counsel submitted that the statement is most unnatural. It is strange that the witness would carry the register of expenditure all the time along with him and Shri Magraj Patodia should forcibly take the register from the witness and have the anxiety to look into it as if the register was the 8th wonder of the world.

The only attempt to tell the story is to produce some register alleging to be regular account of election expenses incurred in connection with Shri Radha Krishna Birla's election.

8. It does not stand to reason why should a man who has spent even money out of his own pocket for a candidate should come to give evidence against him in the court after due election unless prompted by any corrupt motive.

7. None of the dealers named by him from whom he made purchases in connection with the election have been produced. This witness is one of the informants of the petitioner and if he had really made any purchases, he must have informed the petitioner of these dealers. Non-production of the dealers thus gives rise to an adverse inference being drawn against the petitioner.

8. The witness admits that "there is our ancestral haveli at Navalgarh in which both Shri Radhey Shyam Morarka respondent no. 2 and 1 are co-sharers."

9. The witness made some statement about his son as under:—

(a) "My son Kajod is a congress side and he was working for one Minister who was contesting elections from the Navalgarh Legislative Assembly Constituency from the Congress party."

(b) "I do not know whether my son Kajod arrived in Navalgarh from Bombay in connection with the general elections as my son has been living separate from me for the last seven years. I heard that my son arrived at Navalgarh in connection with the general elections."

(c) "I did see my son at Jhunjhunu during the period when the counting of the voters were going on. I had no talk with him and I had no occasion to see him before the election period."

(d) "I have seen Ex. A/8. It bears the signatures of my son Kajod at C to D."

(e) "This voucher was marked Ex. PW14/10. The signature might be of my son and might not be."

On the basis of these statements it was submitted that the witness's statements are unnatural and it is indirectly proved that the witness also worked for Shri Radhey Shyam Morarka and he still gives evidence only in his interest. The counsel also commented that on his own showing the witness was committing breach of trust and as such, cannot be a reliable witness. Over and above all that it was submitted, the manner in which he produced the file in Court was also peculiar.

In reply, the counsel for the petitioner emphasised that,

(1) Shri Banwarilal Nathuramka has not stated anything except on documents. His evidence is corroborated

(i) by internal evidence of all exhibits produced by him

(ii) by trunk calls showing the presence of Shri Bajranglal Birla at Navalgarh; and

(iii) by photograph Ex. 536 showing Shri Nathuramka's presence along with the respondent.

(2) No suggestion was made to him that his relationship with the respondent was strained.

(3) That there were raids in Birla concerns on 15th June, 1967 as admitted.

(4) The file "A" contains letters of several officers of the Birla concerns. The fear of lavish expenditure in the elections getting publicity was a matter to be avoided. Shri Banwarilal Nathuramka had been paid his outstanding bill of Rs. 9000/- and odd, the day previous to the handing over of the file. There was therefore nothing unnatural in entrusting the file to his own worker for custody. More so, when he is not connected with any Birla concerns.

(5) If the file contained the letters of Shri D. P. Mandalia and others and if Mandalia and others worked for the respondent's election, there was nothing wrong in the files being handed over back to Shri Radha Krishna Birla after his election was over. Shri Mandalia did not require it for himself and the respondent could have put his own letters into that file.

I have very carefully considered the evidence of Shri Banwarilal Nathuramka and am not prepared to treat him as a reliable witness. The story of Shri

Nathuramka about the manner in which he got the file from Shri Radha Krishna Birla is not at all natural and convincing. There could have been no need of handing over such a file for fear of raids as the materials in the file could not have attracted any raid. The presence of him in a photo where the respondent also figures is not decisive in treating him as the respondent's worker. In order to show that he was associated with the respondent's election he has produced Ex. PW14/1 and gone to the extent of proving "Nathuramka" in the hand of the respondent. He is not much literate and I cannot accept his opinion evidence at its face value. Even so, a suspicion about the manner in which the file was produced need only warrant a cautious approach in judging the proof of documents and it should not be held sufficient to reject all documents summarily.

With reference to the letter Ex. PW42/6, the counsel for the respondent submitted that Shri Matadin Bagaria's evidence cannot be considered sufficient to prove Shri M. P. Birla's handwriting on it. Shri Matadin Bagaria (PW/42) seeks to prove the signatures of the respondent on Ex. PW42/1, in Ex. PW42/2 some writings in pencil "Doctor Sharma to talk to me", in Ex. PW42/3 some pencil writing "SPK" in capital letters, in Ex. PW42/4 the three capital letters "SPK", and similarly in Ex. PW33/29 the letters "SPK" and "Is he useful" and the letters "SPK" in Ex. PW42/5 in the handwriting of the respondent. He also seeks to prove the signatures of Shri M. P. Birla on Ex. PW42/6 and signatures of Shri K. K. Birla on Ex. PW 42/3. Similarly, he seeks to prove the signatures of Shri D. P. Mandolia, Shri Murlidhar Dalmia, Shri Surajmal Mehta, Shri Ram Parsad Poddar, Shri Subh Karan Jagnani and Shri P. D. Matharia. This witness visited Jhunjhunu constituency during the election period under instructions from the Congress High Command and stayed in the constituency for some days. The witness was interested in the success of Shri Radhey Shyam Morarka respondent No. 2 in the 1962 elections as also in the 1967 elections and in that connection addressed meetings. He got an article published in a paper "Anand Mangal (Weekly)" a copy of which is Ex. 495, in which he described the respondent No. 2 Shri Radhey Shyam Morarka as a "Guard of National Treasury Morarka—who broke open the underground cells of profiteering" and described Birla who formed Birla Farm by snatching away the lands of the farmers in Punjab—whose grabbing eyes are on the Rajasthan fields on the pretext of breeding sheep. The witness did not have in his possession any letter written or signed by Shri K. K. Birla, Shri M. P. Birla, Shri Surajmal Mehta, Shri P. D. Makharia, Shri Subh Karan Jagnani and Shri Murlidhar Dalmia. The witness identified the signatures of some persons including that of Shri Surajmal Mehta only on the basis of his having seen his letters in the possession of other persons. He also admits that he did not see Shri Radha Krishna Birla writing after the year 1951. In connection with the opinion evidence doubts are sometimes thrown on the evidence of handwriting expert on the ground that they are unconsciously prejudiced in favour of the parties calling them. Naturally, therefore the competence of this witness to identify the signatures or pencil writings sometimes consisting only of letters cannot be accepted with safety. Besides, he is a partisan witness and it has to be borne in mind that election creates and promotes partisan feelings at a very high pitch, and sometimes partisan witnesses even though responsible, would not hesitate to give twists to facts to suit the party producing them. In this view of the matter, his opinion evidence cannot be held by itself sufficient to prove Shri M. P. Birla's signatures on Ex. PW42/6.

There is, however, the internal evidence provided by the contents of this letter and the connected letters which prove the authorship of the letter. In this letter there is a reference to Shri Radha Krishna Birla's letter of 30th December, 1966 from Jaipur. There is in this very file a letter on the letter-head of the respondent dated 30th December, 1966. This letter consists of about three pages and at the third page after six lines there is the seal impression after the words "yours sincerely" "original signed by R. K. Birla". Then there is a post-script note bearing the initials of Shri Radha Krishna Birla "R.K.B.". A copy of the letter purports to have been endorsed to Shri Mandolia. In this letter there is a reference about the jeep requirements and Ex. PW42/6 also deals with the question of the jeep requirements. It must also be mentioned that the petitioner in the petition itself mentioned Shri M. P. Birla as having worked for Shri Radha Krishna Birla. The petitioner also sought to examine Shri M. P. Birla and even applied for issue of a commission. The respondent also included him in the list of witnesses and yet did not choose to produce him. He, himself, even though entered the witness box, yet did not deny the signatures of Shri M. P. Birla on Ex. PW42/6. He no doubt examined one Shri Ram Niwas Vaidya (RW/13) who claimed to have identified the signatures of several persons of the Birla family and the Birla Group

of concerns but he even stated that he does not know Shri M. P. Birla and cannot identity his signatures. I also find that there are striking similarities in the signatures of Shri M. P. Birla in Ex. PW42/6 and his signatures on Ex. 517 and Ex. 518, applications received from Shri M. P. Birla in this Court.

Having regard to all the circumstances, I am satisfied that this letter bears the signatures of Shri M. P. Birla.

At this stage, it will be convenient to refer to the controversy raised by Shri Mitra as to the proper use of the documents where signature of the persons on the documents are proved. He submitted that proof of signatures cannot amount to proof of the contents of the documents much-less of the truth of the contents. It was strongly urged that this Court should not look into the contents of the document for any purpose including the one of using the internal evidence provided by the contents of the documents. He relied upon the observations of Bhagwati J. in *Madho Lal Sindhu v. Asian Assurance Co. Ltd., and others* (6):—

"Section 67, Evidence Act only permitted the proof of the signatures or handwriting of the person signing or writing the document to be given and considered it to be sufficient in those cases where the issue between the parties was whether a document was signed or written wholly or in part by that person. It did not go so far as to say that even if it was proved that the signature or the handwriting or so much of the document as was alleged to be in the handwriting of the person, was in his handwriting, it would go to prove the contents of that document. No doubt the proof insofar as it was sought to be given in the evidence of Balkrishna Bhagwan Deshmukh of the signature or handwriting of the said various documents could have established that those documents were signed or written in the handwriting of Deshpande, Paranjape or Jamnadas; but the matter could rest there and would carry the plaintiff no further."

He also relied upon *Bir Mohammed Yusuf and another v. D. and another* (7). In that case it was argued that the view taken by Bhagwati J. in *Madholal Sindhu v. Asian Assurance Co. Ltd., and others* (6) could not be considered good law because of the certain observation of the Supreme Court in *Mubarik Ali v. State of Bombay* (8). The Bench of the Bombay High Court distinguished *mubarik Ali's case* (8) with the following observations:—

"...It is clear to us that the decision in *Mubarik Ali's case* does not affect the decision given by Bhagwati J. viz., that the proof of the documents does not amount to proof of the contents thereof. The only question that arose in *Mubarik Ali's case* related to the formal proof of the document and, therefore, their Lordships of the Supreme Court held that the letters and telegrams could be said to have been formally proved by reason of internal evidence provided by the documents and the positive evidence given by the recipient of these documents. Once the letters and telegrams were held proved, the further question about the proof of the contents did not arise in *Mubarik Ali's case* because the author of the documents was accused himself and the statements contained therein would amount his admissions. In our view, therefore, the decision of Bhagwati J. is still good law."

Attempting to find out the reasons for the decision of Bhagwati J. the learned judges pointed out that the evidence of the contents contained in the documents was hearsay and referred to the rule rejecting hearsay evidence and the reasons for the rejection of such evidence and eventually recorded the following conclusions:—

"To conclude this part of the discussion we hold, in the first place, that what has been formally proved is the signature of Abreo and not the writing of the body of the document at Ex. 28 and secondly, that even if the entire document is held formally proved, that does not amount to a proof of the truth of the contents of the document. The only person competent to give evidence on the truthfulness of the contents of the documents was Abreo."

In reply, the learned counsel for the petitioner invited my attention to a Single Bench decision of the Bombay High Court in *Bhima Tima Dhotre v. The Pioneer Chemical Co.* (9). The learned Single Judge of the Bombay High Court referred to both the Bombay decision relied upon by Mr. Mitra and further

agreed with the construction of the judgment of the Supreme Court in Mubarik Ali's case (8) by the Division Bench but expressed his disagreement in regard to the admissibility of the documentary evidence, although being bound by the Bench decision, followed the decision. The learned Judge gave reasons in support of the contrary opinion. Mr. Pai also relied upon *Laxmipat Choraria and others v. State of Maharashtra* (10), *Union of India v. H. C. Goel* (11) and *Nathoolal v. Durga Prasad* (12) where evidence of previous statement oral or in writing was admitted. I must at once observe that in considering the applicability of cases it must not be forgotten that the courts deal with the concrete cases with reference to specific fact and do not record abstract answers in order to evolve general or inflexible principles. Each case has its own factual facets and a specific controversy upon which the principle is based and it is necessary to evaluate the principle in the factual back-ground. In Madholal's case (6) an attempt was made to prove through Sub-Accountant in the Head Office of the Bank several documents consisting of letters and documents executed by Jamnadas in favour of the Bank and also the resolution of the Executive Committee of the Bank and the letters addressed by the Bank to Nissim by proving the handwriting in which all the documents purported to have been written Bhagwati J. characterised this attempt "as an attempt to prove the handwriting of these various documents without calling in evidence the person who had written the same or who were acquainted with the contents thereof so that they might not be subjected to cross examination at the hands of the counsel for the official Assignes. It was also pointed out that out of the witnesses who could have proved them were Deshpande, the managing director of the bank, Paranjape the Secretary of the bank, Jamnadas and Nissim. It appears, Bhagwati J. was felt more concerned about the truth of the contents of the documents and treating them as hearsay, overruled them in the absence of non-examination of the three above named witnesses. Similarly, in the matter of Sir Mohammed Yusuf and another v. Moners V. D. and another (7) the Division Bench considered at length the circumstances in which the letter relied upon was brought in evidence. These decisions are unexceptionable having regard to the facts in these cases but they should not be construed as laying down any inflexible rule irrespective of the facts of individual cases. After a careful consideration of these cases and the statutory provisions, I think it proper to sum up the position of law as under:—

1. The authorship of a document can be proved by direct and indirect evidence and in appropriate cases even without proving the signatures.
2. In considering the authorship of a document on mere proof of signatures on the document a proper conclusion can be arrived at having regard to the facts and the circumstances, such as—
 - (i) nature and contents of the document.
 - (ii) existence or otherwise of a controversy as to the particular portion of a document being in the nature of interpolations.
 - (iii) total denial or qualified denial on the part of the person alleged to have signed the document.
3. The contents of the documents being generally hearsay evidence should not ordinarily be admitted in evidence but when it becomes substantive evidence having regard to the various provisions of the Evidence Act such as sections 6 to 8, 18, 32, 34 and other provisions of the Evidence Act, it may be admitted in evidence.

In the present case, the petitioner seeks to prove the signatures of the respondent Shri M. P. Birla, Shri D. P. Mandelia, Shri S. P. Khetan, Shri J. C. Dhariwal and Shri B. P. Misra. With reference to all of them, he came forward with the case that they were the agents of the respondent. He tried to produce them. He obtained summonses for them and also applied for issue of commission. The application was opposed by the respondent. The respondent also included them in the list of the witnesses. It cannot be accepted that the petitioner avoided them only to prevent them from being cross examined by the respondent. The various letters and documents containing the statements of these persons may be in the nature of their declarations or verbal acts explaining the election campaign on behalf of the respondent which can be taken as one transaction. These previous statements may be relevant to explain the various events in connection with the transaction and the statements of either the respondent or the persons acting as his agents having some bearing on facts in

issue and relevant facts, may be admissible as admissions. They may further provide internal evidence which is in the nature of circumstantial evidence. In this view of the matter, I overrule the objections of Shri Mitra and hold that the internal evidence provided by the contents of the letters can be looked into for establishing connection between the various documents and hold them proved. I also hold that the contents being declarations of the respondent and his agents, are admissible for properly understanding and appreciating the entire transaction. It may, however, be added that these contents of the documents shall not by itself be treated as constituting the proof of the truth of the recitals in the contents of the documents.

The next document is Ex. PW14/5. It purports to be a letter from Shri Radha Krishan Birla on a letter head containing in print the name of "Radha Krishan Birla" towards the left hand side top and "Industry House, 159, Churchgate Reclamation, Bombay 1," and below them in type "Camp Jaipur" on the right hand-side top. The letter is in three pages; the other two pages containing in print "continuation" sheets marked "2" and "3" respectively. On the third page five lines constitute the body of the letter and the seventh line contains "with regards". The letter ends with "yours sincerely" and there is a seal impression "original signed by R. K. Birla". The letter is addressed to Shri M. P. Birla, Bombay. Thereafter there is a post-script beginning with "P.S." consisting of six lines. This purports to bear the initial "R.K.B." of Shri Radha Krishan Birla respondent. Then, there is an endorsement of "copy to D. P. Mandolla, Bombay". Shri Banwarilal Nathuramka (PW/14) has made a statement that Ex. PW14/5 bears the signatures of Shri Radha Krishan Birla at A to B. The respondent appearing as RW/1 has denied his initials.

The counsel for the petitioner invited my attention to trunk-call tickets nos. 520/435 to 520/439 and 520/441 showing that on 30th December and 31st December telephone trunk calls were booked from Vishram Vatika, Pilani telephone No. 105 to Jaipur telephone No. 745461 P. P. R. K. Birla and Radha Krishan Birla. On the basis of these tickets the petitioner's counsel contends that Shri R. K. Birla was at Jaipur on 30th and this lends corroboration to the contents of the mention in the letter "Camp Jaipur under the print 159, Churchgate Reclamation, Bombay-1". The witness was shown his initials on Ex. PW14/5 without showing the contents and asked to admit or deny the initials. The witness answered that "I am not in a position to admit or deny without looking into the contents." The witness was subsequently shown the contents of Ex. PW14/5 and after cursorily looking at these papers the witness replied that the long initials "R.K.B." are not his initials. On these answers of the respondent it was argued that these are apparent similarities in the respondent's initials and the initials appearing on Ex. PW14/5 and consequently, the witness was not in a position to deny them. The witness therefore wanted to look into the contents and to admit or deny according to his own convenience. The counsel also relied upon the reference of this letter in the letter No. Ex. PW42/6 from Shri M. P. Birla to whom this letter was addressed and to which Ex. PW42/6 appears to be a reply. It is true that Shri Banwarilal Nathuramka (PW/14) is the only witness who has been examined to prove the signature of the respondent. His evidence has been discussed earlier and the conclusion reached that he is not a witness upon whom much reliance can be placed. All the same, having regard to the internal evidence of the contents of this letter and the letter Ex. PW14/6 and the circumstances of the case, I hold that the initials of the respondent stand proved.

Ex. PW 14/4 purports to be a letter dated 10th December, 1966 addressed by Shri Radha Krishna Birla to Shri D. P. Mandella, Bombay. The letter is in three typed pages and on the third page after the words "your affectionately" it purports to bear the signature reading "Radhakrishan". Having regard to the similarities in the admitted signatures of the respondent and the signatures on this letter and the internal evidence provided by the contents, I hold the signatures of the respondent proved.

The next document is Ex. PW 14/6. This purports to be a letter dated 29th November, 1966 from Shri Radha Krishan Birla to Shri Karansingh on printed letter head containing in print "Radhakrishan Birla" towards the left-hand top and "Industry House, 159, Churchgate Reclamation, Bombay-1" on the right-hand top corner. It does not bear the respondent's signatures or initials but there is the seal impression "original signed by R. K. Birla". The learned counsel for the petitioner contended that having regard to this peculiar method adopted by the respondent the letter should be held proved. Shri Banwarilal Nathuramka (PW/14) states "on the basis of this rubber stamp

I say that this letter was issued by Shri Radha Krishan Birla. I say so because I also received such letters having such seals on the letters." I need only say that it is possible for any-body to get the seals prepared at any time and to obtain such impressions of seals. There is no strong circumstantial evidence to prove the authorship of Shri R. K. Birla. It will be, therefore, hardly proper to hold this letter proved.

The next three documents are Exs. PW 33/59, PW 33/60 and PW 33/61. Ex. PW 33/59 purports to be a bi-weekly report No. 9 written from Pilani on 11th January, 1967 and is addressed to "Pujya Babuji" (Alleged to be Shri G. D. Birla) and is said to bear the signature of Shri Dhariwal (J. C. Dhariwal). It is a document consisting of five pages. Ex. PW 33/60 is a letter on a letter head containing in print towards the left on the top "J. C. Dhariwal". It is a letter dated 8th January, 1967 addressed to "Pujya Babuji" (Shri D. P. Mandelia) in which there is a reference to the receipt of letter from the Secretary of Pujya Babu Ghanshyam Dasji. It bears the signatures of Shri J. C. Dhariwal as "J. C. Dhariwal". Ex. PW 33/61 is bi-weekly report No. 3 addressed by Shri Dhariwal to Pujya Babuji (Shri G. D. Birla).

To prove the signatures of Shri J. C. Dhariwal on these three documents the petitioner relied upon the evidence of Shri Shankar Lal Roopdaska (PW/33). Shri Shankar Lal Roopdaska's evidence is "I was employed under M/S York India Ltd. Faridabad, Birla concern. Shri Bhagwati Prasad Kanodia was the commercial manager in that company. In the second week of December, 1966, Shri Bhagwati Prasad Kanodia—commercial manager—sent me to Shri Baij Nath Birla General Manager of the Birla Cloth Mill at Delhi. Shri Baij Nath Birla sent me to Pilani to work in connection with the election campaign of Shri Radha Krishan Birla. He gave me a letter addressed to Shri S. P. Khetan. I reached Pilani and handed over the letter to Shri S. P. Khetan. I saw him at the building known as "Lalkothi". Shri S. P. Khetan was incharge of the Central Election Office of Shri Radha Krishan Birla at Pilani. I was asked to remain incharge of the correspondence files and also to receive letters and to despatch letters on behalf of Shri Radha Krishan Birla's Election office. In connection with the election work Shri S. P. Khetan and Shri J. C. Dhariwal used to dictate letters to stenographers who used to type the letters and the typed letters used to be delivered to me and I used to take them to Shri S. P. Khetan and Shri J. C. Dhariwal for their signatures. The letters used to be typed in duplicate. Shri S. P. Khetan and Shri J. C. Dhariwal used to subscribe their signatures to the original letters and to make their signatures or to put initials on the copies. I used to post the originals and to keep the duplicates with me. I used to file the duplicates and the files used to remain with me I saw Shri S. P. Khetan and Shri J. C. Dhariwal written and I can identify their hand-writings and signatures..... I maintained files from the 2nd week of December 1966 to the first week of February, 1967. Thereafter, I went to Nawalgarh." The witness identifies the signatures of Shri J. C. Dhariwal on these three letters. The counsel for the petitioner relied upon the evidence of Shri Shankar Lal Roopdaska and made the following points for holding his evidence reliable:—

1. That, it was not the respondent's case that Shri Shankar Lal Roopdaska was not working in connection with the election at Pilani or Nawalgarh. The respondent's suggestion was that he was working for the congress party.
2. In his statement he imputed role in the election to eight persons, namely, Shri Murti—Secretary to Shri R. K. Birla, Shri Verghese, Shri S. P. Khetan, Shri J. C. Dhariwal, Shri P. D. Makharia, Shri D. P. Mandella, Shri Baijnath Birla, Shri Kanodia. Out of these, none except Shri P. D. Makharia has been examined to contradict Shri Shankar Lal Roopdaska.
3. The internal evidence of the file corroborates his evidence in as much as the file contains the letters of most of the persons referred to by Shri Shankar Lal Roopdaska (PW/33). The file contains letters communication arrival or calling of the persons. It also contains reports of the election activities.

4. The cross examination of Shri Shankar Lal Roopdaska is not that he was employed in M/S York India Ltd. but that he was dismissed in the year 1969 while according to him, he resigned. This question postulates an admission that he was an employee.

5. The witness is a truthful witness in as much as in his entire evidence he has not said anything against Shri Radha Krishna Birla.

Commenting upon the evidence, the counsel for the respondent contended:—

- (1) That Shri Magh Raj Potodia (PW/4) while giving the names of the various persons working at Lalkothi, Pilani, does not give the name of Shri Shankar Lal Roopdaska.
- (2) Shri Banwarilal Nathuramka (PW/14) and Shri Virandra Kumar Chowdhary (PW/15) who claim to have worked in Navalgarh Election Office and Shri Vishwa Nath (PW/43) who claims to have sent persons in Navalgarh office, do not name Shri Sankar Lal Roopdaska.
- (3) The name of Shri Sankarlal Roopdaska does not appear in the lists A and C though Shri Sankarlal Roopdaska himself claims to have come from Birla concern.
- (4) In the entire election file there is no mention of the name of Shri Shankarlal Roopdaska.
- (5) No doubt Shri Sanwar Mal Runthla (PW/11) names Shri Shankarlal Roopdaska amongst the persons who came from Delhi but he states that he had no personal knowledge and his statement was based on information received from Shri Baluram Halwai. It was also pointed out that in file "B" there is a list showing the names of persons who arrived from M/S York India Ltd. Faridabad. In that list also the name of Shri Sankarlal Roopdaska does not find place.
- (6) The learned counsel also pointed out that Ex. A-22 counting agents appointment form of Shri Radhey Shyam Morarka bears the signatures of Shri Shankarlal Roopdaska which he himself admitted. The counsel also wanted to rely upon the document marked Ex. D-3 to show that Shri Shankarlal Roopdaska was acting as the polling agent of Shri Shivnath Singh, a congress candidate from Gudda but as the document was not put to the witness he could not be permitted to rely upon that.

7. The witness Shri Shankarlal Roopdaska could not give the name of the typist who used to type letters. He also admitted that a first information report was submitted by the police against him under section 452, Indian Penal Code, that the police declared him absconder. He could not produce writing of anybody whose signatures he has identified.

In replying the criticism of the witness by Mr. Mitra, Mr. Pai maintained the fact that either Shri Shankarlal Roopdaska or any other person signed the counting or polling agent form of Shri Radhey Shyam Morarka or Shri Shivnath Singh is of no significance as infiltration into enemy camp was an admitted policy of Birla organisation, *vide* G. D. Birla's directives—File "A", page 115.

I have considered the statement of the witness and the arguments of the counsel with regard to his testimony. (1) The fact that Shri Shankarlal Roopdaska was not mentioned as a worker at the Lal Kothi, Visharm Vatika, Pilani or at Navalgarh by Shri Magh Raj Potodia (PW/4), Shri Banwarilal Nathuramka (PW/14) and Shri Sanwaramal Runthla (PW/11), and the important role which he states to have played in the election activities does warrant a cautious approach to his evidence. (2) He admits to have signed the counting agents form of Shri Radhey Shyam Morarka Ex. A-22. He, however, came forward with the following story in connection with this version:—

"Though Ex. A-22 bears my signatures yet I was not present at Jhunjhunu during the counting period. One friend of mine Shri Shankarlal approached me in the market at Navalgarh at about 5 P.M. Shri Shankarlal told me that I had to remain present at the time of counting. Shri Shankarlal was Birla's man and he wanted me to be present on behalf of Shri R. K. Birla at the counting. He had no counting agent form signed by Shri R. K. Birla in his possession. One of his friends was standing near him and he had a counting agent form signed by Shri Radhey Shyam Morarka. Shri Shankarlal asked me to subscribe my signatures to that counting agent form signed by Shri Radhey Shyam Morarka with the observation that that will enable me to be present at the counting. In the evening on the 21st at about 7 or 7.30 I learnt of my mother having been involved in an accident and I left for Delhi."

It is difficult to accept such an explanation. The witness is also said to have signed the polling agents form of Shri Shrivnath Singh, a congress candidate for the Assembly, although that form was not put to the witness at the time of his examination. His signature on that form does not stand proved but Mr. Pal referring to Shri Shankarlal Roopdaska signatures on the counting agents form of Shri Radhey Shyam Morarka and the polling agents form of Shri Shrivnath Singh relied upon the theory or infiltration into the enemy's camp. Shri Shankarlal Roopdaska does not come forward with such a version. There is no documentary evidence to show his active association with the election campaign. It is also not understandable that even though Shri Shankarlal Roopdaska was a mere despatcher yet the stenographers of Shri S. P. Khetan and Shri J. C. Dhariwal should after getting dictations from them and typing letters, hand over those letters to him for getting them signed. The witness's leaning in Court is definitely towards the petitioner and Shri Rahey Shyam Morarka. The witness knew most of the officers only in connection with the election and yet he claims the competence to identify the signatures of the persons whom he saw merely signing for some period. Such a statement cannot be easily accepted. I cannot hold this witness reliable.

There is no other evidence to prove the signatures of Shri J. C. Dhariwal on these three letters. It may be also mentioned that on Ex. PW 33/60 the signatures are "J. C. Dhariwal" but on Ex. PW 33/61 the signatures are simply "Dhariwal". Referring to Ex. PW 33/59-biweekly-report, Mr. Pal made attempt to emphasise three circumstances lending support to the genuineness of this letter. Firstly, that an account in the name of Thakur Raghuvir Singh, Chief Organiser, was opened with the United Commercial Bank, Vidya Vihar, Pili on 19th January, 1967 soon after the policy decision in this report and that Thakur Raghuvir Singh was introduced in the Bank by Shri Vishambhar Lal Chharia whose name appear in the bi-weekly report. Secondly, the names of the election offices were changed from Shri R. K. Birla's election offices to Swatantra Party election offices, and thirdly, that printing of the letter-heads in the name of Swatantra Party was also commenced.

It is true that Thakur Raghuvir Singh's account was opened on 19th January, 1967 but there are no circumstances connecting this event to the biweekly report. Such a suggestion was not put to him. The witness made a statement that nobody introduced him in connection with the opening of his account in the Bank. There was no question whether he was introduced by Shri Vishambhar Lal Chharia. The petitioner made no attempt to bring on record by evidence to show precisely the date on which the names of the election offices were changed or the printing of the Swatantra party letter-heads was undertaken. Thakur Raghuvir Singh, Shri Sanwermal Basotia etc. were not examined on suitable lines to bring the precise materials on record. There is no other circumstantial evidence either in the form of the internal evidence provided by the letters or of any other nature to establish the authorship or Shri Dhariwal. It is true that Shri Dhariwal has not been examined by the respondent. Still, I hold that signatures of Shri Dhariwal on those three documents are not proved.

The remaining four documents in File "A" are Ex. PW 33/62, Ex. PW 33/63, Ex. PW 33/64, and Ex. PW 33/65. They are said to be in the hand-writing of Shri B. P. Mirsa. The position with regard to Shri B. P. Mirsa is almost similar to one with regard to the signatures of Shri J. C. Dhariwal and without repeating all that has been said in connection with Shri Dhariwal's signatures on Ex. PW 32/59, Ex. PW 33/60 and Ex. PW 33/61. I hold that Shri B. P. Mirsa's signatures on these documents do not stand proved.

Reference may now be made to the other five documents appearing in this file Ex. PW 19/1, Ex. PW 19/2, Ex. PW 19/3, Ex. PW 19/A and Ex. PW 19/B. Vide Ex. PW 19/1, one Shri Vasudev Sharma made a claim for an amount of Rs. 105/- on account of his diet expenses and an account of his wages for the period from 21st December, 1966 to 11th January, 1967. Shri Vasudev (PW/19) proves his own signatures. Although the name of the addressee was not mentioned in the application the witness states that the application was submitted by him to Shri Kishorilal Tibrewala. In this document the witness identified the English hand-writing marked A to B in the hand-writing of Shri Mahavir Prasad. He further identified Hindi writing marked C to D in the hand-writing of Shri Satya Narain Sharma to Shri Mahavir Prasad. The witness identified in this document Hindi writing marked A to B in the hand-writing of Shri Satya Narain Sharma and Hindi hand-writing C to D in the hand-writing of Shri Suraj Mal.

Ex. PW 19/3 is a note addressed by Shri Surajmal to Shri Kishorilal Tibrewala with regard to the remuneration of Shri Vasudeo. Shri Surajmal's signatures are sought to be proved by the witness.

They relate to an expenditure incurred before the issue of the notification calling upon the constituency to elect candidates and the petitioner did not rely upon the expenditure paid to Shri Vasudeo. I, therefore, consider it unnecessary to record any finding with regard to these documents.

Ex. PW 42/9 to Ex. PW 42/14 are letters alleged to bear the signatures of Shri Surajmal Mohta. Only one witness, namely Shri Matadin Bhageria (PW/42) has been examined to prove his signatures. His statement is, "I have not seen Shri Soorajmal Mohta writing. I have, however, received letters purporting to have been signed by him. I am, therefore in a position to identify the signatures of Shri Soorajmal Mohta. The letters which were seen by me were received by Shri Ram Gopal Mohta and Shri Shiv Ratan Mohta with whom I had substantial business connection." The witness has simply seen some letters alleged to have been written by Shri Surajmal Mohta to other persons. Having regard to this fact and the witness's interest in the congress in general and in Shri Radhey Shyam Morarka in particular, his evidence is not sufficient to prove the signatures. It is true that the respondent did not choose to examine Shri Suraj Mal Mohta yet having regard to all the circumstance I am not in a position to hold the signatures of Shri Surajmal Mohta on these letters proved.

Another document in this file to which reference may be made is Ex. PW 33/66. It is an unsigned letter addressed to Shri B. P. Misra, Bhadra. On this letter there is a post-script writing. Shri Shankarlal Roopdaska (PW/33) says that this is in the handwriting of Shri D. P. Mandelia. The witness saw him writing when he visited Lal Kothi during elections. I have already discussed his evidence and on the basis of his evidence I cannot hold that the writing on Ex. PW 33/66 is proved to be in the handwriting of Shri B. P. Mandelia.

Yet, another document to which reference needs to be made in Ex. PW 42/15. It is a letter which purports to have been signed by Shri Ram Prasad Poddar to Shri Murlidhar. Shri Matadin Bhageria (PW/42) has been produced by the petitioner to prove the signatures of Shri Ram Prasad Poddar. He states, "letter dated 22nd November, 1966—Ex. PW 42/15 from Shri Ram Prasad Poddar bears his signatures marked A to B I am in a position to identify his hand-writing. I have been friendly with Shri Ram Prasad Poddar for the last 30 years. I have seen his writing. I have also received letters purporting to have been signed by him. The respondent Shri Radha Krishan Birla denied the signatures of Shri Ram Prasad Poddar on Ex. PW 42/15 and produced one Shri Ram Niwas Vaidya (RW/13) who states, "I can identify the writings and signatures of Shri Ram Prasad Poddar as I have seen him writing, signing and initialling. I have seen Ex. PW 42/15. In this document the signatures marked A to B purporting to be of Shri Ram Prasad Poddar are not his signatures. Thus, the solitary opinion evidence of Shri Matadin Bhageria (PW/42) cannot be held sufficient to prove Shri Ram Prasad Poddar's signatures.

On the basis of discussion, I hold that:

Initials of the respondent on Ex. PW 14/5 signatures of the respondent on "PW 14/4 and initials of Shri M. P. Birla on Ex. PW 42/6 stand proved.

I now turn to the prayer of the petitioner's counsel for exhibiting the remaining documents of file "A". I may at once state that file "A" consists of loose papers. One does not find papers in chronological arrangement in the file. It is also significant that neither the petitioner (PW/4) nor Shri Banwarilal Nathuramka (PW/14) who is said to have received the file from Shri Radha Krishan Birla and who kept the file with him for some period, nor Shri Shankarlal Roopdaska (PW/33) who is said to have maintained the file in the election office have chosen to refer to individual documents in the file. One cannot reasonably eliminate the possibility of papers being taken out and inserted in the file. The story of Shri Banwarilal Nathuramka as to the manner in which he got the file is not worth acceptance. The manner in which he produced the file in Court is also not straight. It is still a mystery how some of the documents in connection with the Shri Birla's election contained in the file came into his possession. Having regard to all these considerations one cannot easily hold the various papers in the file as genuine documents and exhibit them. A strong and satisfactory case has to be made out with regard to each document before it can be exhibited.

I now proceed to examine the reasons given by the petitioner's counsel for exhibiting the various documents.

The pages at nos. 6 and 7 of the File A which have been marked for description as Ex. PW 19/A and Ex. PW 19/B are sought to be exhibited by a comparison of the signatures of Shri Surajmal M.L.A. contained in Ex. PW 19/3. When Shri Vasudeo (PW/19) was being examined the counsel put these two documents to him. Ex. PW 19/A relates to hire charges of a jeep No. RJV 210 for a period from 15th December, 1966 to 18th February, 1967. As jeep No. RJV 210 was not included in annexure 'J' the petitioner was not permitted to prove the expenditure of this jeep. Ex. PW 19/B is also a letter alleged to have been sent by Shri Surajmal in connection with the running of jeeps. As Shri Surajmal was not alleged to be an officer of the Birla concerns or an agent of the respondent his previous statement contained in the letter cannot be treated as substantive evidence and cannot be accepted.

The document at page 23 is a statement of account of Thakur Raghbir Singh in the United Commercial Bank, Pilsani. The reasons given for exhibiting the document is that it is a copy of Ex. 481. Having regard to the general observations with regard to this file a copy of this type cannot be exhibited.

With regard to documents at pages 25, 90 and 97, it is stated that these pages are letters written on the letter-head of the swatantra party election office, camp Bhadra and purports to be letters under signatures of Shri B. P. Mishra. It is requested that they should be exhibited after comparison of the signatures of Shri B. P. Misra in Ex. PW 33/62 to Ex. PW 33/65. The signatures of Shri B. P. Misra on Ex. PW 33/62 to Ex. PW 33/65 have not been held proved as already stated above. These letters, therefore cannot be exhibited.

Document at page 43 is sought to be exhibited by reference to its connection with Ex. PW 42/12 and Ex. PW 42/13. As these two letters have not been held proved and, therefore, it cannot be exhibited.

Documents at pages 52, 53 and 34 are copies of telegrams alleged to have been sent by Shri D. P. Mandalia to H. H. Rajmataji and Maharaja Scindia of Gwalior. As they are blank unsigned papers and cannot be inserted at any time, they cannot be exhibited.

Document at page 62 is a telegram. The only request for exhibiting it is that it was received from post and telegraph office and should be presumed to be a genuine document under section 88 of the Evidence Act. The despatcher of the telegram is one Shri Prayag. The addressee's name cannot be ascertained on account of the portion of the telegram being torn. There is absolutely no good reason for exhibiting this document.

Telegram at page 61 is connected with telegram at page 62 and cannot be exhibited.

At page 100 is a telegram showing Shri Radha Krishan Birla as sender and showing one Moorthy as having signed the document for Shri Radha Krishan Birla. It is a blank unsigned paper and having regard to the nature of the file it cannot be exhibited.

Documents at pages 114 to 125 are sought to be exhibited on account of their reference in Ex. PW 33/60. As Ex. PW 33/60 has not been held proved, they too cannot be exhibited.

Document at page 126 is sought to be exhibited by the mention of the words "further to my letter dated 3rd instant" which has reference to Ex. PW 42/6 and certain references to each donations from Case. It is a blank unsigned paper and having regard to the nature of the file it will be hardly proper to exhibit this document.

Telegram at page 129 is sought to be exhibited for reasons similar to the document at page 61 and for the reasons given in that connection it cannot be exhibited.

Documents at pages 132, 136-137, 139-143, 149-151 and 160-161 are all unsigned papers and cannot be exhibited.

Documents at pages 24, 25, 60, 41, 66, 67 and 68, are sought to be exhibited on the basis of the comparison of these signatures or initials of Shri J. C.

Dhariwal with his signatures on Ex. PW 33/42 and to Ex. PW 33/51 but as the signatures on these documents have not been held proved the documents at these pages cannot be exhibited.

The prayer of the petitioner for exhibiting various documents in this file as contained in the two applications thus stands rejected.

I now take up file "B" The circumstances under which the file B was brought on record have been mentioned earlier. According to the analysis given by the petitioner's counsel, it consists of 660 pages out of which 161 letters are on printed letter-heads (including inland letters), 29 are on inland letters with printed letter-heads bearing postal marks, 15 letters bear franking machine marks of five different companies posted from eight different places, 48 letters bear reference numbers of other letters, 24 are original telegrams and 303 documents bear signatures or initials of 88 different persons.

The petitioner examined the witnesses, namely, Shri Shankarlal Rcopdaska (PW/33) and Shri Matadin Bhageria (PW/42). Shri Shankarlal Rcopdaska stated that Ex. PW 33/1 to Ex. PW 33/20 and Ex. PW 33/30 to Ex. PW 33/41 bear the signatures of Shri S. P. Khetan and that Ex. PW 33/42 to Ex. PW 33/51 bear the signatures of Shri J. C. Dhariwal, that Ex. PW 33/52 to Ex. 33/57 bear the signatures of Shri P. D. Makharia and Ex. 33/58 bears the signatures of Shri Kishorilal Tibrewal. Shri Matadin Bhageria (PW/42) states:

1. That Ex. PW 42/1 bears the signatures of Shri Radha Krishan Birla. The portion of the pencil writing encircled by red pencil, excepting, the portion relating to initial, is in the hand-writing of Shri Radha Krishan Birla. This portion is marked Ex. PW 42/2.
2. That the capital letters "SPK" in Ex. PW 42/3 were in the hand-writing of Shri Radha Krishan Birla. That the letter bears the signatures of Shri Radha Krishan Birla. He, however, adds that the letter portion consisting of the word "file" and "initials" are not in the hand-writing of Shri Radha Krishan Birla.
3. In the letter addressed by Shri S. S. Chordia to Shri J. C. Dhariwal the handwriting in pencil of three capital letters "SPK" are in the hand of Shri Radha Krishan Birla which is marked Ex. PW 42/4.
4. In the document Ex. PW 33/29 the words "SPK" and the words "Is he useful" marked C to D are in the handwriting of Shri Radha Krishan Birla.
5. That on a note at page 632 of the file the words "SPK" are in the hand-writing of Shri Radha Krishan Birla which is marked Ex. PW 42/5.
6. That the initials marked A to B in a letter, dated 1st January, 1967 addressed by Shri M. P. Birla to Shri Radha Krishan Birla is in the handwriting of Shri M. P. Birla. The entire document was there-upon marked Ex. PW 42/2.
7. That in letter dated 26th January, 1967, purporting to have been addressed by Shri L. N. Birla to Shri D. P. Mandella the portion encircled by a red pencil including signatures is in the handwriting of Shri D. P. Mandella which portion is marked Ex. PW 42/7.
8. That the letter dated 10th December, 1966, Ex. PW 42/8 bears the signatures of Shri M. D. Dalmia whose signatures are marked A to B.
9. That Ex. PW 42/16 and Ex. PW 42/17 bear the initials of Shri Subh Karan Jagnani. The witness, however, could not state with certainty whether a letter addressed by Shri S. K. Jagnani to Shri S. P. Khetan marked "A/1" for identification purposes bears his signatures or not.

Besides, the petitioner's counsel made some general submission in support of the genuineness of the file. In the first place, it was submitted that after the production of the copies of the documents the respondent got a complaint Ex. 579 filed by Shri S. P. Khetan at the Police Station, Bhandup. He emphasised the following contents of this complaint:—

"I then checked the whole cabin and the drawers and found out the following three files missing from my cabin, i.e., from the drawers. I had seen these files some four months back.

Each file is of fulscape with cardboard cover and containing about 200 pages kept in the file. I have written on the cardboard files, File No. 1, File No. 2, File No. 3. The cover of the files, i.e., cardboard is of regular type.

These files contain correspondence between myself and various companies and individuals, i.e., Orient General Industries, Calcutta, Universal Cables Ltd., Satna, etc. I do not suspect any one in particular."

He further pointed out that the petitioner in his application had referred to 600 documents and the complaint also mentioned of three files of about 600 pages missing. He wants an inference to be drawn that the file B is a genuine election file and that Shri S. P. Khetan, under instructions from the respondent, came forward with a case of theft of three files of about 600 pages, had in their mind the election file and they wanted to take some steps to secure the seizure of the file relating to the election and to prevent its production in Court.

Secondly, it was contended that the file several letters on letterheads including inland letters with postal marks and franking machine marks posted from different places and that all such documents could not have been forged. It was strongly submitted that I should compare the disputed signatures and writing with the admitted and proved signatures and writings and arrive at proper conclusions.

In rebuttal, the respondent appearing in his evidence, denied the signatures or initials of himself and other persons. He produced Shri Ram Niwas Vaidya (RW/13) who disproved the signatures of Shri Suraj Mal, Shri S. P. Khetan, Shri Ram Prasad Poddar and Shri D. P. Mandalia on the various documents.

The respondent's counsel repeated the points made by him in relation to the file "A" and in respect of the testimony of Shri Shankar Lal Roopdaska (PW/33) and Shri Matadin Bhageria (PW/42).

I have given the matter my careful consideration. I need not discuss the general submissions made by the counsel for the parties as they by themselves cannot lead to any positive finding. They will of course be borne in mind while reaching findings in connection with the proof of documents on the materials on record.

Taking up the prayer of the petitioner's counsel for examining an expert, it may be noted that the petitioner did not site any expert witness. At a latter stage he did put in an application No. 55 of 1968 on 19th October, 1968, for examining the expert. In this application the petitioner stated in para 1 "the respondent No. 1 in the course of his evidence has denied blatantly what obviously and clearly are his own signatures, writings and initials on the various letters and documents, which form the attendant circumstances it is clear that they have been signed, written or initialled by him. The petitioner in the course of cross examination of the respondent No. 1 has also with the permission of the Court, required respondent No. 1 to give specimen writings which have been exhibited on record. Besides, the respondent No. 1 has also earlier written, signed or initialled on the various pleadings and applications in this Court. On the other hand, the writings given by the respondent in the course of the evidence seems to have been advised over-strained to convey the impression that the writings put to him are not in his own hand." It was also stated "the petitioner could not make this application earlier since the respondent No. 1 began denials of the signatures in his examination-in-chief and has persisted in doing so in the cross examination which began for the first time yesterday, i.e., 15th October, 1968" It may be remarked that the petitioner had ample opportunity to lead evidence of expert or persons having greater familiarities with the hand-writing or signatures of the respondent but he remained satisfied with producing three witnesses, namely, Shri Banwarilal Nathuramka (PW/14), Shri Shankarlal Roopdaska (PW/33) and Shri Matadin Bhageria (PW/42).

The respondent had denied all allegations and was not willing to admit documents in files A and B. It was hardly appropriate for him (petitioner) to wait for the respondent's admissions to prove his case. Having regard to the great delay in the trial of this case for which the petitioner is to a greater extent responsible, and the possibilities of the difficulties continuing even after examination of the expert and also having regard to the attitude of the counsel at the Bar, I do not feel inclined to call the expert at this stage. The application No 55 of 1968 filed on 16th October, 1968 requesting for examination of an hand-writing expert stands rejected.

Considering the evidence let by the petitioner, I may observe that the evidence of the witnesses relied upon by the petitioner has been discussed earlier and found unreliable and unsatisfactory and their evidence cannot be considered sufficient to prove the various signatures and hand-writings. There is of course some force in the point made out by Mr. Pai that whole-sale forgeries were neither possible and could not have been committed in respect of documents in the files A and B having regard to the facts that some of the documents are on printed letter heads having postal marks and franking machine marks and indeed there may be no adequate justification for rejecting all these documents as being forged. The respondent also did not care to produce the persons who were alleged to have worked in connection with the election and to have entered into correspondence. In the circumstances, it is indeed difficult to arrive at strictly true conclusions in the matter of signatures and hand-writings. In this back ground, I gave consideration to Mr. Pai's suggestion that comparison in the light of the observation of Mukharji J. in *Bisseswar Poddar v. Nabadwip Chandra Poddar* and another (13) for a mere effective and active role of a Judge in attempting to arrive at a conclusion by comparing the controversial signatures and writings with admitted and proved signatures and writings, was possible. I do not think that there can be uniform and rigid rule in this behalf. In the present case, looking to the large number of documents the task is indeed herculean. The Bespectacled and subject of Ophthalmic deficiencies naturally at this age, I am not quite sure of my competence to arrive at correct conclusions on the identity of signatures and hand-writings and I decline to adopt an active role likely to be accompanied by the risk of imputing subjectivity in the matter of such a vast number of documents, and I am constrained to record a finding that the documents in file B do not stand proved. I ought to add that having regard to the finding which I propose to record about the role of Birla concerns and its officers and employees and a finding whether these documents stand proved or disproved, does not make any material difference. It may be added that having regard to the above conclusion the question of exhibiting the remaining documents does not arise and I need not discuss in detail the reasons given by Mr. Pai in relation to various papers in the file. The prayer in this behalf is rejected.

As stated, the petitioner relied upon, in addition to the evidence provided in these files, on other oral and documentary evidence. The evidence may be considered under three related questions:—

1. Whether Shri Radha Krishan Birla was an independent candidate or a Swatantra Party candidate?
2. Whether the members of the Birla family, Birla concerns and its officers and employees were actively associating with the election campaign and whether the election campaign was financed by the Birla concerns and whether several officers and employee of the Birla concerns arrived and remained in Jhunjhunu Parliamentary Constituency in connection with the election work?
3. Whether the Swatantra Party and its workers in relation to the election campaign for Shri Radha Krishan Birla were mainly working as Shri Birla's agents and the entire amount deposited in the United Commercial Bank, Pilani, in the name of Thakur Raghuvir Singh, Swatantra Party Chief Organiser was spent exclusively for Shri Radha Krishan Birla through cheques issued in the name of Shri Kishorilal Tibrewal, an officer one of the Birla concerns?

The petitioner relied upon the following oral evidence in this connection:—
Shri Magraj Patodia (PW/4) stated that "Radha Krishan Birla (R. K. Birla) respondent No. 1 contested elections as an independent candidate but adopted the symbol of the Swatantra Party." Shri Kanhaiyalal (PW/6) stated "There was no candidate set up by the Swatantra Party for the Jhunjhunu Parliamentary Constituency. Shri Sanwal Ram (PW/8) state, "There was no candidate contesting on the Swatantra Party ticket but the witness, however, voluntarily stated that Shri Radha Krishan Birla used to be described sometimes as independent candidate and sometimes as a swatantra Party candidate. The symbol of swatantra party is star. The symbol of Shri Radha Krishan Birla also was star. Shri Radha Krishan Birla is treated by me as a swatantra party candidate." The witness voluntarily added that it was stated that Shri Radha Krishan Birla purchased the swatantra party symbol. Shri Radha Krishan (PW/10) stated, "There was no candidate of the swatantra party for the Parliamentary seat." Shri Banwarilal Nathuramka (PW/14) stated, "In the last general election held in February, 1967, the various candidates who contested elections from the Jhunjhunu Parliamentary Constituency were Shri Radhey Shyam Morarka on behalf of the congress party,

Shri Radha Krishan Birla, an independent candidate and several others." Shri Vasudeo (PW/19) in answer to a "Q, you believe in congress ideology, then why did you not support the congress candidate and supported Shri Radha Krishan Birla who was a Swatantra party candidate? replied A. Shri Radha Krishan Birla was not a Swatantra party candidate." He further stated, "Shri Radha Krishan Birla stated that he was contesting as an independent candidate and would join the congress if returned in the election." Shri Ghasiram (PW/27) stated, "Shri Radha Krishan Birla had his symbol the star which is the official symbol of the swatantra party. The election propaganda on his behalf was being carried on in a manner that he was an independent candidate." Shri Matadin Bhageria (PW/42), stated, the candidates who had contested from the Jhunjhunu Parliamentary constituency were Shri Radha Krishan Birla who was contesting as an independent candidate with the symbol of the swatantra party and.....". He also relied upon reference to Shri Birla as an independent candidate. In Ex. 7, Ex. 11, Ex. 12, Ex. 14, Ex. 18, Ex. 20, Ex. 23, Ex. 38; Ex. 39; Ex. 46; Ex. 48, Ex. 57, Ex. 515 and Ex. PW. 14/6. Reliance was also placed upon Ex. 30, Ex. 32, Ex. 34, Ex. 40, Ex. 45, Ex. 48 and Ex. 48 in which there is a reference to Birla families and their work and upon documents Ex. 31, Ex. 33, Ex. 35, Ex. 36, Ex. 41, Ex. 42, Ex. 43, Ex. 44, and Ex. 47 in which individual appeals for the respondent were made and Ex. 40 and Ex. 29 in which joint appeals were made.

Reliance was placed upon the entry No. 351 at page 125 (Ex. 515)—list of members of Lok Sabha in which he has been shown as "un-attached" to any party. It was urged that the entry must have been made on his own declaration giving at the time of oath taking ceremony. Subsequent conduct also shows that he was an independent candidate.

In rebuttal, the respondent relied upon the following portions from the statements of some of the petitioner's own witnesses. Monohar Lal Ojha (PW/7) an Executive Officer, Nagar Vihar, Pilani, stated, "It is correct that Shri Radha Krishan Birla was contesting elections as a candidate of the swatantra party." Shri Girdhar Gopal (PW/17) Advocate stated that "Shri Radha Krishan Birla was one of the contestants for the Parliamentary seat from the Jhunjhunu Constituency. Thakur Raghuvir Singh incurred all expenses generally in connection with the election campaign of the swatantra party candidates, including that of Shri Radha Krishan Birla.....I did not see any independent office of Shri Radha Krishan Birla at Jhunjhunu." Shri Sanwermal (PW/26) who is member of the Rajasthan Legislative Assembly having been returned as a swatantra party candidate in the last general elections stated, "Shri Radha Krishan Birla was officially candidate of the swatantra party for Jhunjhunu Parliamentary Constituency." Thakur Raghuvir Singh (PW/32) Chief Election Organiser and President of the Jhunjhunu District Swatantra Party, also says that he (Shri Radha Krishan Birla) was an official candidate of the swatantra party. Not only these witnesses but the Petitioner's witness Shri Ghasiram (PW/27) who was a communist candidate contesting against Shri Radha Krishan Birla also admits that "Shri Radha Krishan Birla had his symbol the star which is the official symbol of the swatantra party. The election propaganda on his behalf was being carried on in a manner that he was an independent candidate."

The respondent's witnesses describe him as swatantra party candidate.

I have considered the evidence very carefully and have no hesitation in coming to the conclusion that the respondent was a candidate sponsored and supported by the Swatantra party and during the election period he could not be treated as an independent candidate. It is true that in some pamphlets or at some speeches he might have been described as an independent candidate but that might be easily explained as a party of the election strategy adopted for winning support of the voters. In this connection the official documents showing how he described himself in obtaining a symbol and how the Returning Officer acted in the matter is the best evidence. The petitioner took no steps to contradict the respondent by this.

There is considerable oral evidence to show that the members of the Birla family, Executive Officers of the Birla concerns and their employees associated with the election of the respondent. The names of Shri G. D. Birla, and M. P. Birla, Shri D. P. Mandalia, Shri S. P. Khetan, Shri J. C. Dhartiwal, Shri B. P. Misra, Shri M. D. Sharma, Shri K. L. Tirbrewal and various others have figured in the evidence of many witnesses. The telephone trunk tickets show that Shri G. D. Birla's telephone number and Shri D. P. Mandalia's telephone numbers were

excessively used during the election period. There are some statements in Ex. PW 14/4, which have also bearing upon this question. It is stated therein "the official set up, which has been put up naturally is now to be managed by our people and as has been decided by all of you, I should not spend my time in this type of office work. The best way to organise this would be for our mill people, who had come for the various constituencies to work, should be asked to bring their wives and their other women relations and naturally they would canvass for us." In Ex. PW 14/4 there is also a reference of "SPK" in Ex. PW 14/5 and Ex. PW 42/6, letters exchanged between Shri M. P. Birla and Shri R. K. Birla, there is reference of securing jeeps from the Caco and of the Caco contributing funds to the swatantra party for use in connection with the election. It should be also noted that the petitioner's counsel showed his keen desire to examine the leading members of the Birla family and the top executive officers but he could not succeed in doing so on account of their stay outside the State. The respondent though in a position to examine them, did not produce them. In the light of the oral evidence and the contents of the letters Ex. PW 14/4, Ex. PW 14/5 and Ex. PW 42/6 and having regard to the fact that the respondent did not examine the officers and employees referred to in the evidence of the petitioner, it will be fairly permissible to hold that the Birla concerns were interested in the candidature of Shri Radha Krishan Birla and contributed funds to the swatantra party mainly on account of the candidature of Shri Radha Krishna Birla for the Jhunjhunu Parliamentary Constituency and Rs. 1,50,000/- were contributed by the Caco for this. The accounts of Thakur Raghuvir Singh further show that he obtained each of Rs. 2,25,000/- as contributions which he got deposited in the Bank. He did not and was not willing to indicate the source from which he got the money. He denied the suggestion that the money was paid by Shri Radha Krishan Birla. He could not give evidence as to the manner in which the publicity and propaganda was carried on and also how the accounts were managed and offered an explanation that Shri Udaibhan Singh was responsible for the accounts and Shri M. D. Sharma was responsible for publicity and propaganda. It will be a safe inference that the amount of Rs. 2,25,000/- might have been obtained from business concerns primarily the Birla concerns. It may also be safely accepted that these concerns spared their employees and officers in connection with the election work.

In connection with the third point the respondent's counsel submitted that the petitioner did not come forward with a case in the election petition that the respondent or for that matter Birla concerns and their officers spent money through the Swatantra party only to evade the consequences of section 123(6) of the Act. None of the witnesses took such a stand. On the other hand, they were talking of Birla's election offices. It was only after the accounts of Thakur Raghuvir Singh in the United Commercial Bank Pilani came on record that a suggestion was put, for the first time, to Thakur Raghuvir Singh who denied the suggestion.

This contention was met by Mr. Pal with an argument that the petitioner's case in relation to Swatantra party is only in answer to the case set up by the petitioner that he was a Swatantra party candidate. It is difficult to accept Mr. Pal's argument in entirety. The respondent No. 1 contested on the Swatantra party symbol and the expenditure from the account of Thakur Raghuvir Singh in the United Commercial Bank which is now being relied upon by the petitioner, was opened in the name of Thakur Raghuvir Singh in his capacity as the Chief Election Organiser. In spite of this, the petitioner came forward with a case that the respondent was an independent candidate. He did not take any plea that the petitioner incurred expenditure through Swatantra party. Omitting to give undue weightage to the nature of the pleadings and attempting to find out the correct factual position, I may state that the funds in the name of Thakur Raghuvir Singh came from the Caco and from probably other Birla concerns. The amount was withdrawn under cheques in the name of Shri Kishorilal Tibrewal. A controversy was joined by the respondent's counsel that Shri Kishorilal Tibrewal could not be treated as an officer of the Birla concerns. It was pointed out that he was described in the list "A" as cashier of M/S Indian Smelting & Refining, Bhandun, whereas evidence has been led to show that he is a cashier in M/S Dig Vijay Woollen Mills. In the schedule which was presented by the petitioner in connection with the application for amendment Shri Kishorilal Tibrewal was described as accountant of M/S Dig Vijay Woollen Mills, Jamnagar. The petitioner has been a little careless in describing Shri Kishorilal Tibrewal but having regard to the oral evidence of the witnesses with regard to Shri Kishorilal Tibrewal and the non-production of Shri Kishorilal

Tibrewal and the evasive answers, I have no hesitation in holding that Shri Kishorilal Tibrewal was connected with the Birla concerns and that he was associated with incurring of the expenditure by Thakur Raghuvirsingh to safeguard the interest of Shri Radha Krishan Birla. It may be stated that several officers of Birla concerns and employees came and worked in connection with the election and they must have worked through the Swatantra party offices. Even Shri Radha Krishan Birla himself in his written statement admitted that industrialists were happy with his candidature and thousands of people irrespective of their caste and position in life must have worked for him. The eventual conclusion to be drawn is that the Swatantra party was very much interested in the candidature of Shri Radha Krishan Birla and placed Thakur Raghuvirsingh in charge of the Parliamentary Constituency and that a fund was placed at his disposal and that Thakur Raghuvirsingh conducted election campaign in the Jhunjhunu Parliamentary Constituency and incurred expenses mainly with an eye on the candidature of the respondent though due regard must have been kept for the Assembly candidates on account of the mutuality of the interests. The evidence of Shri Sanwarmal (PW/26), Shri Megh Singh (RW/10) and Mooli Chand Kalewa (RW/7) Assembly Swatantra party candidate, shows little or no expenditure incurred by the Swatantra party for their elections. To say this, however, is not to say that the Swatantra party was merely an agent and tools in the hands of either the Birla concerns or Shri Radha Krishan Birla. The Swatantra party is a recognised all India party and had been active in the elections in Rajasthan. In the year 1962 elections the Jhunjhunu District Swatantra party leader Thakur Raghuvirsingh (PW/32) contested against the respondent No. 2 and lost only by a narrow margin. It might have had its own plans and policies particularly for Rajasthan and it is very likely that the Swatantra party entered into an alliance with the Birla group for their mutual interests and it will be improper to conclude that the Swatantra party agreed to be used as a merely tool or instrument by the Birla family or the group of Birla concerns. It may also be noted that the party acts through leaders and the leaders not very infrequently act on account of their personal whims and caprices. It is in this background of the role of the members of the Birla family and the Birla concerns and the Swatantra party that the question of election expenses shall be examined.

1. Expenses on wall paintings:

In para 4(a) the petitioner generally referred to the expenditure on publicity and propaganda and mentioned the expenditure at about Rs. 2,00,000/- on printing of posters, pamphlets, leaflets and cartoons and the preparation of bagges of the election symbol "star", rubber balloons with the slogans "vote for Birla", and flags of silk and cotton cloths and their distribution as also as wall paintings.

In para 4(e)(i) the petitioner's counsel relied upon an expenditure of Rs. 22,000/- on wall paintings. The petitioner's case in this behalf is set out as follows:—

"The paintings referred to above were printed on the walls of several houses in all the towns and the villages in the Jhunjhunu Parliamentary Constituency. Some of the photos of such paintings in Jhunjhunu, Nawalgarh, Mukandgarh, Chirawa, Pilani, Khetri, Singhana, Pipli, Deoroad, Morwa and Dulanla have been produced. The respondent No. 1 incurred the expenditure for the aforesaid wall paintings and wall writings of about Rs 30,000/- out of which a sum of Rs 22,000/- was paid to one Messrs. Rai Brothers of Bhiwani for the said work on or about 10th February, 1967 at Pilani."

The respondent No. 1 in reply has set out in para 4(a)(i) as follows:—

"This is denied that this respondent made any expenditure of Rs. 30,000/- for wall paintings and wall writings. The allegation of the petitioner is palpably false to his knowledge. This is denied that this respondent paid any amount of Rs. 22,000/- to the alleged Messrs. Rai Brothers of Biwani for the said work or any other work on or about 10th of February, 1967 at Pilani or at any other place. This respondent is not aware of any firm of the name of "Messrs. Rai Brothers of Bhiwani. The petitioner has alleged an expenditure of Rs. 30,000/- but he has given details of Rs. 22,000/- only and he be confined to prove the alleged expenditure of Rs 22,000/- alleged to have been given to the alleged Messrs. Rai Brothers of Bhiwani. No

copies of the photos of paintings referred to in this paragraph have been furnished to this respondent. The petitioner be ordered to supply the copies of such alleged photographs. In any case, the alleged photographs have not been verified according to law and they do not deserve to be considered by this Hon'ble Court."

It appears that initially the respondent was shown to have incurred the expenditure on wall paintings. While giving further particulars of the corrupt practices the petitioner wanted to amend *vide* item No. IV of the Schedule and para 4(a)(1) of the petition for amendment to add the words "and his agents with his consent" after the words "respondent No. 1". On an objection by the respondent the petitioner was not permitted to introduce the respondent's agents in connection with the incurring of the expenses in relation to wall paintings. Issue No. 2 in respect of this item, having regard to the allegation in para 4(a)(1) shall be confined to expenses incurred by the respondent and not through agents.

At the out-set, it will be proper to notice the controversy relating to two documents which have been marked for identification purposes as U/2/A to E and V/2. U/2/A to E or a muster rolls prepared on the paper sheets supplied by the Swatantra party election office containing Swatantra party election office and the symbol "star". V/2 is said to be a register containing daily reports of the work of wall paintings done by Rai Publicity. A few facts may be stated in this connection. The petitioner alleged payment of Rs. 22,000/- to Rai Brothers. In his list of witnesses he cited Shri Ganpat Rai Joshi of M/S Rai Brothers/M/S Rai Publicity, Bhiwani, as his witness with the following documents:—

"Books of accounts, duplicate bills, bank pass books, correspondence and other records of M/S Rai Brothers/M/S Rai Publicity Bhiwani for December 66 to April 67."

On 8th December, 1967 he submitted an application No. 10 of 1967 for examining Shri Ganpat Rai of M/S Rai Publicity Bhiwani (Haryana) on Commission. While the application for examining him on commission was pending, he obtained summonses on 1st March, 1968 for his attendance in Court on 15th April, 1968. The service of the summons was effected on 10th April, 1968. But, despite service of summons, he did not care to appear. A fresh summons was again ordered to be issued. It was obtained by the petitioner on 26th August, 1968 for his attendance in Court on 29th August, 1968. On that date Shri Ganpat Rai did not appear but sent a letter with a medical certificate stating that he was indisposed and requested for adjournment. The petitioner by his application No. 45/68 dated 24th September, 1968 prayed for issue of commission for his examination, but the application was rejected by my order dated 26th July, 1968. The petitioner further, in his application No. 48 of 1968 filed on 3rd October, 1968, requesting for issue of warrants against some other witnesses, emphasised the fact that the election agent of the respondent was effectively preventing the petitioner's witness Shri Ganpat Rai Painter of Bhiwani from coming to this Court and giving evidence. Whatever may be the reason, Shri Ganpat Rai could not appear in Court and give evidence. However, on 7th October, 1968, one Shri Ganesh Dutt submitted miscellaneous application No. 51 of 1968 in which he stated (1) Shri Ganpat Rai Joshi was under the pressure of Shri P. D. Meekharla and was being prevented from attending the Court and (2) that Shri Ganpat Rai had handed over some documents to him to be produced in Court. The petitioner also made an application No. 53 containing a prayer to examine Shri Ganesh Dutt. By my order dated 7th October, 1968 these prayers were rejected on the ground that Shri Ganesh Dutt had no written authority from Shri Ganpat Rai Joshi to produce the documents. At a later stage when the respondent appeared in evidence, the petitioner faced him with the register and the payment sheets which were then marked U/2/A to E and V/2 for identification. The respondent, however, denied the genuineness of these documents. The documents thus could not be brought on record. The petitioner's counsel strongly submits that V/2 is a register containing daily reports of the Rai Publicity and contains entries relating to the work done on wall paintings. The register was kept in the usual course of business in a regular manner. It contains initials and signatures and writings of Shri M. D. Sharma who is admittedly the Publicity Incharge of the Swatantra party, and according to the petitioner, of the Bir/ra U/2/A to E are payment sheets maintained regularly on sheets supplied by the Swatantra party. The attendance of the labourers is marked and the amount of payment due is shown. The bill amount is struck at the bottom and payments are shown

to have made on the bill. They are also, according to him, kept in the regular course of business. He further submitted that the respondent in his election return marked Ex. 289 has shown Shri Ganpat Rai of Rai Publicity, Bhiwani, as his agent for wall paintings. He also submitted that Shri Shankar Das Roopdaska PW. 33 has also stated about certain payments having been made in his presence to Shri Ganpat Rai of Rai Paintings, Bhiwani. He also pointed out the following similarities:—

1. Words "wall, paintings, Joshi" in his signatures in Voucher No. 283-Ex. A36 tally with the same words appearing in register V/2.
2. Initials at the bottom of "Joshi" are also identical.
3. Paysheets U/2/A to E also contain the same initials over receipt.

It was also stated that the documents V/2 and U/2/A to E contain the initials and signatures and writings of Shri M. D. Sharma, who was admittedly the Publicity Incharge of the Swatantra party and according to the petitioner, of the respondent. The counsel contended that Shri M. D. Sharma whose initials or signatures are said to appear on the register and Shri Ganpat Rai Joshi who was admittedly employed as an agent to do some wall paintings and Shri Kishori Lal Tiberwala who is alleged to have made payments and the necessary record alleged to be in possession of Shri Ganpat Rai Joshi have not been produced and, therefore, an adverse inference should be drawn against the respondent. He also submitted that the Court should compare the writings on V/2 and U/2/A to E with the writings on Ex. A-36. On such comparison there would be no escape from the conclusion that the writings and signatures on these documents V/2 & U/2/A to E are those of Shri Ganpat Rai Joshi. Having regard to all these things he strenuously submitted that these documents V/2 U/2/A to E should be held genuine and should as such be exhibited.

He referred to the observations of P. B. Mukerji J. in *Bisesswar Poddar v. Nabadwip Chandra Poddar* (13) rejecting the theory at judicial blindness requiring judges not to take decision in cases of disputed signatures by mere comparison without the aid of the opinion of a hand-writing expert. The prayer has been strongly opposed on behalf of the respondent. I have already given in detail the circumstances under which the petitioner was unsuccessful in attempting to bring these documents on record. The petitioner did not file any list of documents under O. 7, 14 Civil P. C. including these documents as those on whom he would rely. These documents were not specifically summoned from Ganpat Ram Joshi. Ganpat Ram Joshi could not be examined as a witness. Ganesh Dutt's competence to produce these documents was not recognised and the petitioner's prayer was rejected. The documents are not on the record of the case, further, the petitioner came forward with a specific case that an amount of Rs. 22,000 was paid to Rai Brothers on or about the 10th of February 1967 at Pilani. By means of these documents the petitioner now wants to prove five payments made on different dates by one Kishori Lal Tibrewal to Rai Publicity as distinguished from Rai Brothers. In connection with the expenses on wall paintings, I have already ruled that the petitioner could not be permitted to prove expenditure through the agents. I may also observe that the prayer suggested by the petitioner's counsel is clearly against the elementary principles of justice. In exhibiting and using the documents at this stage, the respondent would stand prejudiced as he could have no opportunity to lead any evidence to rebut the evidence contained in the documents as having remained under an impression that the documents were not on the record of the case. There is no evidence also to establish the identity of Ganpat Rai Joshi mentioned in V/2 and U/2/A to E with Shri Ganpat Rai Joshi of the Rai Publicity as mentioned in Voucher No. 83 (marked Ex. A. 36) in Ex. 289.

For all these reasons, I cannot accept the prayer of the counsel, for the petitioner that the writings and signatures of Ganpat Rai Joshi appearing in V/2 and U/2/A to E should be compared with the writings and signatures in Voucher No. 83 marked Ex. A-36, for being taken on record as evidence. The petitioner's prayer in this behalf stands rejected.

For oral evidence, the petitioner relies upon the evidence of PW. 4 Shri Maeraj Patodia PW. 5 Shri Kalicharan. PW. 6 Shri Kanhaiyalal PW. 10 Shri Radha Kishan, PW. 11 Shri Sanwar Mal Ruthla, PW. 13 Shri Doongar Singh, PW. 15 Shri Virendrakumar, PW. 18 Shri Dwarka Prasad, PW. 32 Thakur Raghubir Singh, PW. 33 Shri Shankarlal Roopdaska and PW. 42 Shri Matadin

Bhagaria. The petitioner Shri Magraj Patodia's statement is to the following effect:—

"The Respondent No. 1 also got printed on the walls throughout the constituency writings to the effect that the people should vote for Birla or for Radha Kishan Birla or vote for the symbol Star. All this work was done through Rai Printers or Brothers, Bhiwani."

He also produced photographs Ex. 57 to Ex. 231 of the wall paintings which he arranged for being taken after the election. He got the photos of the wall paintings in Nawalgarh, Mukandgarh and Jhunjhunu taken by Shri Kanhaiyalal Photographer of Jhunjhunu (PW. 6), of wall paintings at Chirawa, Pilani, Singhana, Khetri, Devroad, Pcepli and Marwa through Shri Om Prakash Photographer of Pilani (not produced) and of wall paintings at Rajgarh by Shri Kalicharan (PW. 5). In cross-examination he admitted that he did not witness any payment being made or received in connection with the election expenses said to have been incurred by the respondent. Even no contracts were entered into in his presence. He further stated.

"My statements about the expenses incurred by the respondent No. 1 in connection with the election are made on the basis of information received or on my own estimate about the likely expenditure that might have been incurred."

He alleged payment to Rai Brothers and Rai Printers and not to Rai Publicity. The petitioner's evidence is of no avail in proving any expenses by the respondent as wall paintings. His evidence is also of not much use in establishing the extent of the wall paintings done on behalf of the respondent.

The petitioner's next witness is Shri Kali Charan (PW. 5). His evidence is,—

"I saw wall paintings on a large scale on the walls in the Rajgarh town containing writings soliciting votes for Shri Radha Krishan Birla or for the symbol "Star" or for both. I noticed for the first time the wall paintings 15 days before the date of polling and thereafter I frequently saw these wall paintings. I took photographs of the wall paintings."

His statement further is that Shri Seesh Ram, a member of the Legislative Assembly, Rajasthan, elected from Rajgarh constituency introduced him to Shri Magraj Patodia on some day, not before a month and a half and not later than two months after the polling date, and Shri Magraj Patodia and he reached an agreement under which he agreed to take photographs at Rs. 4 per photo. He took about 48 photos, but could not contact Shri Magraj Patodia and, therefore, the photos remained with him. He contacted Shri Seesh Ram. He produced negatives of the photos marked Ex. 431 to Ex. 478. There was no mention in the election petition of photos of wall paintings at Rajgarh. The story that having taken photos under some agreement with Shri Magraj Patodia he would take no steps to contact Shri Magraj Patodia and deliver photos to him, does not appear to be convincing. The conduct of Shri Magraj Patodia in not caring to obtain the photos as also of the witness in taking no steps to deliver the photos to Shri Magraj Patodia and receiving his payment, is not the conduct of normal human beings. Not much reliance can thus be placed on his evidence. Besides his evidence at the most proves the existence of the wall paintings but does not, in any way, connect the respondent with the wall paintings or any expenditure in connection with the wall paintings.

PW. 6 Shri Kanhaiyalal's statement is,

"At his (Magraj Patodia) order, I took some photographs of wall paintings at Jhunjhunu, Nawalgarh and Mukandgarh. I also took about 28 photographs of wall paintings at Jhunjhunu, 24 photographs at Nawalgarh and 24 photographs of wall paintings at Mukandgarh."

He identified the copies of the photographs Ex. 159 to Ex. 225. He also produced the negatives of the photographs marked Ex. 159/1 to Ex. 225/1. He took these photographs 20 days after the polling day. He saw the wall paintings at all these three places ten days before the polling. His evidence is similar to the evidence of Shri Kalicharan PW. 5 and does not, in any way, connect the respondent either with the wall paintings or the expenditure.

PW. 10 Shri Rada Kishan stated:—

"There were various types of wall paintings containing writings to seek support for the election of Shri Radha Kishan Birla. Some of these writings on the wall paintings were, as follows:—

1. Birlaji ka tara Birlaji hamara
2. Radhakishanji Birla ko vote do
3. Birla kon Pilani vala.
4. The Mara Ke thanko: (There was a photo of Birlaji on the wall paintings).

There were several other writings on wall paintings. There was wall paintings on a very large scale with the result that every wall and corner was utilised for the purpose of wall paintings."

In cross-examination he states-

"The wall paintings was done by a person from Bhiwani. I cannot give his address. He did the work 20 days before the polling date. I had no contact with that person. I had casually enquired from the persons carrying on wall paintings and they informed me that they had been from Bhiwani."

His evidence is also of a very general nature and like the evidence of Shri Kall Charan PW. 5 it does not connect the respondent with wall paintings or the expenditure on it.

P.W. 11 Shri Sanwar Mal Ruthla state,—

In connection with the election propaganda Respondent No. 1 got writings painted on the walls, soliciting votes for Shri Radha Kishan Birla. Painting was done on the walls through stencils and by other means. This was done by one painter brought from Bhiwani."

In cross-examination he says,—

"A man from Bhiwani who was in charge of the painting works, was connected with Rai Brothers. I do not know his name. He was staying at the Birla Guest House. He used to taken his tea at a shop adjacent to my shop and used to take betel leaf at my shop. He had 20 to 25 persons with him. I cannot give the name of any one of these twenty to twenty-five persons. I made some casual enquiry and I was informed that they were working on behalf of Rai Brothers....No payment was made to them in my presence. They did about 200 to 300 paintings but I cannot say the remuneration that they got from these paintings."

He admits to have got a pamphlet marked "E" published supporting the candidature of Shri Radhey Shyam Morarka. His evidence is hardly reliable and does not establish the extent of expenditure by the respondent.

Shri Doongar Singh (PW. 13) stated,—

"These persons distributed pamphlet, posters, did painting on the walls and hoisted flags on houses and also distributed badges."

From his evidence it is not clear as to who made wall paintings. He does not name Rai Publicity or Shri Ganpat Ram Joshi or any person employed by them to do the wall paintings, nor does he say that the expenditure in respect thereof was authorised or incurred by the respondent. His evidence thus does not connect the respondent with any expenditure on wall paintings.

Shri Virendra Kumar (PW. 15)'s evidence is,—

"On or about 10th January, 1967, Shri Kamla Prasad Kabra told me that some painters had arrived from Pilani and he sent two painters with me to my village for doing wall paintings. I took these two painters and obtained the services of 2 or 3 villagers and with their help I got wall paintings in my village and in village Birol done. I got about 300 to 400 wall paintings done."

In cross-examination he stated,—

"I do not know the names of the painters who arrived from Bhiwani and who accompanied me to my village for wall paintings."

Village Birol is also not mentioned in the election petition as a place where wall paintings were got done. The witness does not connect the respondent directly or indirectly with the work of wall paintings nor with the expenditure incurred by him.

PW. 32 Thakur Raghubir Singh's evidence is of no help to the petitioner. He has no personal knowledge about the expenses incurred in connection with the wall paintings.

PW. 33 Shri Shankarlal Roopdaska's evidence is,

"I know Shri Ganpat Rai, Painter of Bhiwani, I saw him at Lalkothi during the election period. He used to do wall paintings on behalf of Shri Radha Kishan Birla for his election propaganda. He had 6 or 7 persons from Bhiwani, as his employees, with him and he had 10 local residents of Pilani with him. He was given two payments in my presence. Once he was given payment on 15th or 16th of January, 1967. Shri Kishorilal Tibrewal made the payment and the amount paid was rupees two thousand and odd. The second payment was made on 1st or 2nd February. This payment was also made by Shri Kishorilal Tibrewal and the amount paid was about Rs. 2,200."

In cross-examination he stated,—

"I got acquainted with Shri Ganpat Rai Joshi of Bhiwani only at Pilani when he visited Pilani in connection with the election work. I can name only one or two persons who were working under Shri Ganpat Rai. One was Nagarmal and the other was Madanlal. Both of them were of Bhiwani. I cannot give the names of their fathers and their addresses. I cannot give the names of the persons who were recruited locally in connection with wall paintings work. I never accompanied Ganpat Rai or his men whom they want to do wall paintings. Ganpat Rai was not paid for the wall paintings work at any rate. He used to be paid expenses and daily wages of the labourers and also diet expenses. When the amount of Rs. 2,000 or odd was paid to Ganpat Rai of Bhiwani, it was paid on the basis of pay sheet prepared by Ganpat Rai of Bhiwani. I had an occasion to go through that pay sheet. I cannot give the details of the pay sheet. Ganpat Rai gave no receipt for the payment. The second payment was made on 1st or 2nd February. The pay sheet was for over Rs. 2,250 and he was paid Rs. 2,200. On that occasion Kishorilal Tibrewal and Ganpat Rai, besides myself, were present."

This witness has given evidence on several matters and his evidence will be commented upon at a later stage. At this stage it need only be mentioned that he does not establish any payment by the respondent. The petitioner came forward with a definite case of payment of Rs. 2,200 to Rai Brothers on or about 10th of February. In variance with that case he seeks to prove payments of two amounts of about Rs. 2,000 and odd and Rs. 2,200 on two different dates. The petitioner cannot be allowed to set out a different case.

PW. 42 Shri Matodji Bagaria's evidence is,—

"I saw extensive wall paintings on an unprecedented scale. I had occasion to visit about 100 villages and towns and in all these villages and towns on every wall there were a number of stencil cuttings soliciting votes for Shri Radha Kishan Birla and or the symbol of Star. There were wall paintings on some of the walls of each and every town and village visited by me. These wall paintings covered an area ranging 2' x 5', 6' x 7' and even bigger areas. The average cost of per wall painting should be assessed in my opinion at Rs. 12."

He gives the average number of wall paintings at 180 per town and 7 per village. In cross-examination, he stated that he got paintings in connection with the distribution of his picture "Zindagi aur maut". The evidence of this witness has been very much relied upon by the petitioner's counsel.

The petitioner's counsel wants that the evidence of this witness should be relied upon to prove the extent of wall paintings and to arrive at a figure of expenditure on the basis of the rate given by the witness. His statement being of a general nature, it is difficult to ascertain correctly the extent of wall paintings. Besides, he does not connect the respondent with the expenditure on wall paintings

The respondent No. 1 has admitted some wall paintings and shown some expenditure in that connection in his voucher No. 83 (Ex. A-36). He also examined some witnesses, namely Shri Kanhaiyalal RW. 2, Shri Madanchand Jangid RW. 3, Shri Moolchand Katewa RW. 7, Shri Mahavir Prasad Halwai RW. 11 and Shri Motilal Mathur RW. 12. It is unnecessary to deal with the respondent's evidence I have no hesitation in coming to the conclusion that the petitioner has failed to prove the expenditure as alleged in the petition.

Having regard to the absence of reliable evidence in support of the petitioner's case I do not consider that it is a case in which an adverse inference should be drawn on account of non-production of Shri M. D. Sharma, Shri Ganpat Rai Joshi and Shri Kishorilal Tibrewal and the non-production of the records alleged to be in possession of Shri Ganpat Rai Joshi as the evidence from these sources cannot have any bearing on the case as required to be proved according to the pleadings and the Issue.

2. *Expenses in connection with publication and distribution of pamphlets and posters.*—In connection with the election expenses on posters, pamphlets and cartoons the relevant pleadings are in para 4(a) read with para 4(a)(ii) and List (D). The petitioner gave out an amount of Rs. 2,00,000 collectively on the printing of posters, pamphlets, leaflets and cartoons, preparation of badges, balloons and flags and wall paintings. In Para 4(a)(ii) he referred to List 'D' referring to some of the posters, pamphlets, leaflets and cartoons with full particulars. The petitioner's counsel first took up expenses on Ex. 1 and Ex. 2. Ex. 1 is a reproduction of cartoon showing a pair of bullocks in a very lean and thin condition and containing writings "Congress ko vote do." "Vah party jo Sraddhi ke liye yojna banati he." The symbol of the Congress Party has been shown in lean and thin condition to bring out the degenerated condition of the Congress Party. The petitioner in List 'D' put forward a case that—

"About 25,000 cartoons were printed by the Hindustan Times Press, New Delhi and the Respondent No. 1 has incurred an expenditure of Rs. 2,000 on papers and printing of this."

Ex. 2 is again a cartoon showing a Congress leader stating that India would be self-sufficient by 1971 and requesting a very poor and thin voter for a vote and voters' replying that we would vote for you in the year 1972. This is also an anti-Congress cartoon. The petitioner's case is that about 25,000 cartoons were printed by the Hindustan Times Press, New Delhi and the respondent has incurred an expenditure of Rs. 2,000 on paper and printing of this. The petitioner's pleading are not very clear. It does not appear whether these cartoons were got originally prepared or they were reproduction of cartoons which has already appeared in papers. Shri R. N. Sinha (PW. 1) has been examined to prove the expenditure on these two posters. His statement is that cartoon Ex. 1 appeared in Hindustan Times Press dated 7th November, 1966, and Ex. 2 appeared in Hindustan Times Press dated 12th February, 1967. His further evidence is that Shri B. N. Saxena working in Birla Brothers Private Ltd., New Delhi approached him for getting extra copies of the cartoon poster of Ex. 1 printed in the Hindustan Times Press and that 76,000 extra copies of these two cartoon posters were printed at their Press between 13th and 18th February, 1967. He presented a bill of Rs. 2,318 for these posters copy of which is Ex. 3. He received the amount from Shri Saxena on 11th May, 1967 and issued the receipt the counterfoil of which is Ex. 4. He also produced the entries in the job ledger Ex. 5. There is a slight variation between the evidence and the pleadings. The petitioner alleged publication of 50,000 posters and an expenditure of Rs. 4,000. The evidence is that 76,000 posters were printed and the amount paid was Rs. 2,300. The petitioner's counsel pointed out that Shri B. N. Saxena who is Executive Officer of the Birla Brothers Private Ltd., who are Managing Agents of several Birla concerns, was responsible for the printing of these papers and for the payments. He had been in touch with Shri D. P. Mandolia. He in this connection referred to letter dated 18th November, 1966 from one Shri Ram Niwas at page 156 of File 'A' where Shri Mandolia's address has been given as c/o Shri B. N. Saxena. He also relied upon Ext. PW. 42/13—letter from Suraimal Mehta to Shri D. P. Mandolia and an unsigned copy of the letter at Page 43 of File 'A' alleged to have been sent by Shri D. P. Mandolia to Shri Suraimal in reply to Ex. PW. 42/13. He further relied upon the various telephone calls—

9 calls in the month of January and
9 calls in the month of February—

from Shri Mandolia to Shri Saxena as shown by the telephone trunk call tickets—The letter at page 156 of File 'A' is not proved and cannot be referred to. Letter Ex. PW. 42/13 has also not been held proved and, therefore, that letter and the copy of the letter at Page 43 cannot be looked at. The mere fact that there

were more telephone calls from Shri D. P. Mandolia's number to one Shri Saxena in the months of January and February are not sufficient to establish that all these calls were in connection with the printing of posters Ex. 1 and Ex. 2. Even if it be accepted that it was on account of some telephonic calls from Shri Mandolia that the cartoons were printed, still the respondent is not at all connected with the expenditure. The only finding can be that either Shri Mandolia or some Birla concerns might have incurred this expenditure. Here, it will be useful to point out that the name of Shri B. N. Saxena or that of Messrs Birla Brothers Private Ltd. does not find place in the pleadings or lists.

Poster Ext. 7 is a special issue of Shiksha Darsan—February 1967, relating to "Rajasthan Chunavi Halchal Purti Ank, Jhunjhunu Shetra—Pilani Shiksha Kendra", containing a photo picture of Shri Radha Krishan Birla on the first page. The petitioner's case is that the respondent through Messrs Gwalior Rayon and Silk Manufacturing (Weaving) Co. Ltd. Gwalior paid a sum of about Rs. 10,000 to the Publisher and Editor Dr. K. S. Shrivastava, on or about 20th February 1967 at Gwalior for his election propaganda. Neither the Printer nor the Editor of this monthly magazine nor any evidence in respect of this payment has been led. Except the general evidence of the distribution of all the papers, there is no specific evidence with regard to the distribution of this booklet.

Ex. 8 is a pamphlet with a title "Laxmi ke dwar per khada Shri R. R. Morarka". There is no name of the Press and the Publisher on the pamphlet. The petitioner's case in List 'D' is that about ten thousand leaflets were printed and the respondent incurred an expenditure of about Rs. 200 on printing and papers on this. There is no evidence of any cost incurred on printing nor that of any payment having been made by Shri Radha Krishan Birla nor that of the distribution of the leaflets.

Without repeating, I may mention that posters 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 30, 32, 34, 40, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55 and 56 are such about which there is no evidence of any expenses having been incurred on printing or of any payment having been made. There is only some evidence regarding distribution in respect of some of them.

Poster Ex. 24 is an appeal by General Cariappa supporting the candidature of Shri Radha Krishan Birla. The Press line of this appeal shows "Birla Shilp Shala Press, Pilani." The petitioner got produced Ex. PW. 32/36 by Thakur Raghuvir Singh PW 32 showing an expenditure of Rs. 64.26 for two pamphlets—appeal of General Cariappa is Ex. 24 and appeal of Choudhary Kumbharam which is Ex. 35.

Posters Ex. 26, Ex. 27, Ex. 28 and Ex. 29 were got printed at the Press at the Jyotana Printers, Nawalgarh. Kajod Mal PW. 25—a compositor in the Press, has been examined. He states to have received payments from the Publishers Sarvshri Bal Shastri Dundlod, Purshottam Lal Akal and Radhey Shyam Kaushal. He further states that neither Shri Radha Krishan Birla nor the Swatantra Party is connected with these payments. There is no specific and pointed evidence as to the distribution of these posters.

Poster Ext. 31 was printed at the Yamuna Printing Press, Chirawa. Nobody on behalf of the Press has been examined. Thakur Raghuvir Singh PW. 32 of course produced Ext. PW. 32/38—a bill and receipt from Yamuna Press for Rs. 120. The payment of Rs. 120 by the Swatantra Party appears to be connected with this poster. There is no direct and pointed evidence as to the distribution of this pamphlet.

With regard to poster Ex. 33, nobody has been examined on behalf of the Press. The petitioner got produced Ex. PW. 32/33, Ex. PW. 32/34 and Ex. PW. 32/35. Ex. 32/33 is an entry in the rokar debiting Rs. 2,100.00 on publicity expenses paid through Shri Narain Singh. Ex. PW. 32/34 is corresponding entry in the ledger. Ex. PW. 32/35 is a voucher signed by Shri Narain Singh. They prove an expenditure of Rs. 2,100 by the Swatantra Party for printing of this poster and another poster which is Ex. 41.

As regards pamphlet Ex. 35, the press line shows that it was got printed at Jai Ambe Press, Jaipur. Shri Jugal Kishore PW. 35 Proprietor of Printing Press, Jai Ambe, Jaipur, was examined by the petitioner to prove the expenditure. He denies that Ex. 35 and Ex. 39 were got printed at his Press.

Ex. 36, Ex. 37 and Ex. 38 were got printed at the Press "Jay Ambe Mudrana-laya" as stated by Shri Jugal Kishore (PW/35). He produced a bill Ex. PW

35/1 in respect of the printing charges on Ex. 36, Ex. 37 and Ex. 38 which is for such an amount. The bill for Rs. 40 was issued in the name of Shri Chetan Prakash Ranga. Shri Radha Krishan Birla is not connected with these expenses.

Poster Ex. 39 is said to have been printed at Jay Ambe Press, Jaipur. The position with regard to it is the same with regard to poster Ex. 35.

Poster Ex. 41 is of the same nature as Ex. 33 and the expenditure on it is included in the amount of Rs. 2,100.

Poster Ex. 42 is also like Ex. 35.

Poster Ex. 52 is a newspaper. Shri Purshottam Lal Asru (PW/34) has been examined in this connection and he stated that he did not print any poster for swatantra party and also no payment was received.

An analysis of the documentary and oral evidence does not connect Shri Radha Krishan Birla with the expenses but it is established that an amount of Rs. 2,318 was spent on the printing of Ex. 1 and Ex. 2 by Shri B. N. Saxena and that the swatantra party incurred expenditure on the printing and publishing of some exhibit-posters and pamphlets including Ex. 24 (appeal of General Kariappa) and Ex. 35 (appeal of Choudhary Kumbha Ram) and made payments to some of the presses including the Punjab National Press, Chowri Bazar, Delhi, Yamuna Printing and Birla Shilpsala Press run by the Pilani Industrial Corporation. From the account brought on record by Thakur Raghuvir Singh (PW/32) it also appears that the swatantra party incurred an expenditure of Rs. 33,161 on publicity including the amount paid to some presses.

3. *Expenses on plastic badges and balloons.*—The relevant pleadings are to para 4(a)(v). The petitioner's case is that the respondent incurred an expenditure of about Rs. 26,000 for the purchase of plastic badges and balloons printed with the slogan "Vote for Birla". The said purchases were made through one M/s. Brijlal Ramgopal, Manakchowk, Jaipur on/or about 15th January, 1967.

The respondent denied that he incurred the alleged expenditure Rs. 26,000 for the purchase of plastic badges and balloons. His further case is that he made no payment of Rs. 26,000 to M/s. Brijlal Ramgopal on or about 15th January, 1967.

The petitioner relied upon the evidence of Shri Kanhaiyalal (PW/6), Shri Sanwalram (PW/8), Shri Mahadevaram (PW/12), Shri Dungar Singh Jat (PW/13), Shri Seesram (PW/39), and Shri Matadin Bhagaria (PW/42) to prove distribution of badges and balloons. Shri Kanhaiyalal (PW/6) says "During the election I saw distribution of balloons containing writings soliciting votes for Shri Radha Krishan Birla and also distribution of badges containing symbol of star... I also received balloons and badges and also posters and hand-bills and leaflets. I preserved a plastic badge containing the symbol of star and a few balloons containing printed writings soliciting votes for Shri Birlaji." The witness even produced in Court a plastic badge and a bunch of balloons containing writings soliciting votes for Shri Radha Krishan Birla. Shri Sanwalram (PW/8), Shri Mahadevaram (PW/12), Shri Dungar Singh (PW/13) and Shri Seesram (PW/39) state that they saw distribution of the badges and balloons. Witnesses Sanwalram and Mahadevaram (PW/12) go a step further and state that they distributed badges and balloons etc., on behalf of the respondent. Shri Matadin (PW/42) stated that "there were also badges put on by children and students. Badges were showed in the constituency and people received them in abundant quantities." It may be safely inferred that the balloons and badges were distributed during the election period. The evidence to the extent of distribution is, however, general and cannot be accepted at its face value.

On the manner of procuring balloons and plastic badges, there is the solitary evidence of Shri Virendra Kumar (PW/15). He states, "I am employed in the national Ball Bearing Co., Jaipur. That in January, 1967, I was spared from the National Balls Bearing Company to go to Nawalgarh and work for the election of Shri Radha Krishan Birla." In connection with the expenditure under consideration his statement is "on 17th January, 1967, I went to Jaipur in connection with the repairs of the car. I was asked by Hariram Sabu to contact Shri Shyam Sunder Sabu and collect certain materials in connection with the election and to hand them over to the Central Election Office at Pilani. Accordingly, I collected some materials, election badges, balloons, posters and I handed over these materials to one Khetan." In cross examination the witness states that he

knows a firm called M/s. Brijlal Ramgopal and that he had collected materials as per instructions received from Shri Shyam Sunder Sabu of M/s. Brijlal Ramgopal. He would not know this firm before the 15th or 16th January. That what had happened was that at the shop of M/s. Brijlal Ramgopal certain materials were placed to a jeep and they were asked to be deposited at the election office at Pilani.

The respondent's counsel criticised his evidence and stated that the witness had applied for and obtained leave and was factually on leave on the ground of his illness, urgent work and personal work and, therefore, the story of deputing him for work of Shri Radha Krishan Birla is false. According to him, the witness does not prove either the quantum of the expenditure nor the fact as to who spent it nor the further fact as to what the bundle contained and the quantity of the contents. It is further contended that in pleadings in para 4(a) (v) the petitioner came out with a different case that the respondent "got manufactured" whereas during the course of evidence he has made a obvious departure from the previous stand by stating that the respondent "by getting manufactured" plastic badges balloons etc., for a sum of Rs. 26,000 through M/s Brijlal Ramgopal. Further, the petitioner's evidence as it is, does not in any way connect the respondent inasmuch as none of them has spoken either about Mr. Radha Krishan Birla's getting manufactured balloons or plastic badges or purchasing the same worth Rs. 26,000 through M/s. Brijlal Ramgopal. The petitioner's counsel very much emphasised the denial of the respondent that he made any payment to M/s. Brijlal Ramgopal. He further emphasised that in his cross examination when he admitted remittance of Rs. 25,000 he did not put forward a case of payment in connection with the purchase of a jeep. It was only in re-examination that for the first time he made a statement that the remittance was made to reimburse M/s. Brijlal Ramgopal. Emphasising the general denial of payment in the written statement and the shifting stands in his statement and relying upon the registration certificate of the jeep No. RSL. 6308 showing the name of the owner as "R. K. Birla c/o. Birla House Bhagwan Das Road, Jaipur" and the address in the voucher of the United Motors showing the purchases as "R. K. Birla c/o. Harmony Pilani", it was argued that the firm M/s. Brijlal Ramgopal incurred the expenditure on balloons and badges but prepared false accounts and manipulated the account showing the amount incurred in connection with a jeep for Shri Rama Kant Birla of the National Ball Bearing Company in the accounts of Shri Radha Krishan Birla (R. K. Birla). The respondent's counsel on the other hand emphasised that there is no sufficient evidence to indicate the quantities in which the balloons and plastic badges were purchased. He strongly urged that the evidence of Shri Virendra Kumar (PW/15) is unreliable and unsatisfactory. It was also pointed out that the case of Shri Rama Kant Birla was not put to Shri Shyam Sunder Sabu (RW/15). On the basis of this testimony and some evidence about distribution it is not possible to hold that Shri Radha Krishan Birla spent Rs. 26,000 on the purchase of plastic badges and balloons. Even the learned counsel for the petitioner could not claim inclusion of the entire amount on account of the supply of posters alongwith badges and balloons. The suggestion of Mr. Pal that M/s. Brijlal Ramgopal manipulated accounts and introduced the amount spent in connection with the purchase of a jeep by one Rama Kant Birla in the accounts of Shri Radha Krishan Birla so as to screen the expenditure on badges and balloons cannot be accepted in the absence of positive evidence and any definite suggestion put to Shri Shyam Sunder Sabu. Besides, the petitioner having failed to prove the case set up by him, cannot be permitted to secure positive support for his case from the weakness of the respondent's case to such an extent.

4. *Expenses on Petrol and Mobil Oil.*—The petitioner's case is contained in para 4(d) and 4(d) (ii). In para 4(d) the petitioner stated—

"The respondent No. 1 used about 200 jeeps and cars for his election campaign between 13th January, 1967, and 23rd February, 1967. Some of these jeeps were purchased new only for the election by several companies in the Birla complex. The jeeps and other vehicles were also taken on hire by respondent No. 1. The expenses incurred and/or authorised by the respondent No. 1 for petrol and mobil oil for running the said jeeps and cars at the rate of about Rs. 100 per day per jeep or car. The respondent No. 1 incurred and/or authorised an expenditure of a total sum of about Rs. 6,00,000, for the petrol and the mobil oil for the said vehicles between 13th January, 1967, and 23rd February, 1967."

In para 4(d) (ii) the petitioner stated—

“The respondent No. 1 purchased petrol and mobil oil from all the petrol dealers in the constituency for the purpose of election during the period between 13th January, 1967, and 23rd February, 1967, in the jeeps and cars enumerated in list “E” procured by respondent No. 1 for the election. The names of some of the dealers are as under....”

The petitioner gave a list of eleven petrol dealers and alleged payment of various amounts to these dealers totaling Rs. 2,92,000/.

The respondent denied that he used about 300 jeeps and cars. His case was that he had kept three jeeps in all and the expenditure incurred thereon has been duly shown in the return of election expenses. In his election return, the respondent has shown purchase of petrol and mobil oil from Jhandi Prasad Parmeshwar Dayal, Sajjan Singh, Omprakash and Laxmi Oil Company, Bhadra-Petrol Pump and the total amount shown in is Rs. 5,466.89.

The issue relating to this has been framed with reference to the allegations in para 4(d) (i). The petitioner cited in the list of witnesses all the petrol dealers. He obtained summonses for some of them, but none was examined except Shri Atmaram (PW/30) of Pilani Industrial Corporation. His statement is that there is no account of Shri Radha Krishan Birla in his account books. He does not speak of any petrol sold to Shri Radha Krishan Birla and any payment made by him. There is thus no evidence of any of the petrol dealers in connection with the expenditure on petrol. Further, there is no evidence that Shri Radha Krishan Birla made any payment to any petrol dealer. Some evidence has been led to prove generally some payments to Messrs. Sajjansingh Omprakash of Chirawa and Messrs. Arjundeo Dharwal of Sadulpur and use of vehicles by the respondents in connection with election. In addition, the petitioner has examined three witnesses Shri Sanwalmal Ruthla (PW/11), Shri Mahadevram (PW/12) and Shri Banwari Lal Nathuramka (PW/14) generally in connection with the purchase of the petrol.

I first take up the evidence relating to the payment to Messrs. Arjundeo Dharmal, Shri Radha Krishan (PW/10) is the only witness to prove the payment. He stated “during the election period I remained at Sadulpur. At the commencement of the election campaign 10—15 jeeps were being plied in connection with the election propaganda of Shri Radha Krishan Birla in Sadulpur but, for a day or two preceding the polling date, the number of motor vehicles including jeeps used on behalf of Shri Radha Krishan Birla went upto 100—150. The motor vehicles obtained their supply of petrol and various petroleum products from the two petrol pumps of (1) Messrs Arjundeo Dharmal of Caltex and (2) Messrs. Gangaram Jannadhar of Burmah Shell. I am on friendly terms with Shri Dhanraj, son of Arjun, proprietor of the petrol pump of Messrs Arjundeo Dharmal, and, therefore, I had an occasion to visit the pump on several occasions during the election period and thus I had an occasion to see the motor vehicles run in connection with the election campaign of Shri Radha Krishan Birla receiving petrol supply from the pump. About 15 days before the polling date, I saw a man of Birlaji known as “B. S. Chowdhary” paying an amount of Rs. 2,000 to Arjun on account of the price of the petroleum. In cross-examination, he says, “I do not know the precise date on which Shri B. S. Chowdhary paid Rs. 2,000 to Arjun Proprietor of the Petrol Pump on account of the price of the petrol or petroleum products. I even cannot give the day of the week when the payment was made.” The witness further says that “No payment was made by Shri B. S. Chowdhary in my presence, to Shri Arjun but Shri Arjun and Shri B. S. Chowdhary came into the room and Shri Arjun told Shri Dhanraj that the amount had been received on account of the price of petrol of Shri B. S. Chowdhary and that the same should be credited to Shri B. S. Choudhary”. Commenting upon his evidence, the respondent's counsel submitted that payment is alleged to have been made by Shri B. S. Choudhary whose name is not mentioned in lists A or C. His evidence is hearsay as he did not see the actual payment. The respondent appearing as RW/1 stated that he does not know any person of the name B. S. Chowdhary and no person was working for him. He did not authorise payment of Rs. 2,000 to Arjun for petrol being used at Rajgarh. Neither the dealer Arjun nor his son Dhanraj has been examined. In my opinion, there is no satisfactory evidence to prove payment of Rs. 2,000 on account of the price of petrol. Further, the respondent is not in any way connected with the payment.

Regarding the alleged payment to Messrs. Sajjan Singh Omparkash of Chirawa, two payments are alleged—one of Rs. 5,000 on 28th February, 1967, and another of Rs. 5,700 towards the close of January, 1967. For proving the first payment Shri Vasudev PW/19 has been examined. The witness states to have worked for Shri Radhakrishan Birla in the Suratgarh area and in the Chirawa area. With regard to this payment, his evidence is "eight jeep cars were working in connection with the election campaign at the Chirawa office. The petrol supply was received from the petrol pump of Sajjan Singh Omprakash. On 28th February, 1967, one Moolchand who was a candidate for the Assembly seat from Chirawa came to the election office. The incharge of the petrol pump Omparkash was also with him. There was demand for the payment of the price of the petrol and petroleum products and on that occasion, in my presence, an amount of Rs. 5,000 was paid by Laxmi Kant Misra son of Biharilal to Omprakash Banchunka of the petrol pump." The witness at page 195 gives the date of payment as 28th January, 1967. This, however, may have been due to over-sight. Commenting upon his evidence, the respondent's counsel submitted that the witness states to have worked in Chirawa from 28th January, 1967, to 22nd February, 1967. Further, Ex. PW/19/1, an application by Shri Vasudeo Sharma shows that he worked only upto 11th January, 1967. In the circumstances, his presence in the election office on 28th February, 1967, is not understandable. It was further pointed out that the witness could not name the month in which he met Shri Maghraj Patodia after the election and consequently, his evidence giving precise date and time with regard to payment cannot be accepted as reliable. The witness makes a statement contradictory to the statement of the petitioner. According to the petitioner, Shri Vishwa Nath Pasari and Shri Vishwa Nath Sharma were incharge of the election office at Chirawa. On the contrary, Shri Vasudev PW/19 says that the incharge of the election office was one Shri Radheyshyam Bagaria. The petrol dealer or his account books have not been produced to prove the payment.

In rebuttal, Shri Radha Krishan Birla (RW/1) says that he does not know Shri Vasudeo (PW/19) of Chirawa and no person of such name worked for him at Chirawa. The evidence of Shri Vishwanth Pasari (RW/6), Shri Moolchand Katewa (RW/7) and Shri Biharilal Misra (RW/9) shows that Shri Vasudeo Sharma was working for Shri Radheyshyam Morarka and that Shri Laxmi Kant Misra was not working in the election office at Chirawa either as a cashier or in any other capacity. The evidence of the solitary witness thus cannot be accepted to establish the payment. At any rate, the respondent has not been connected with the payment.

Regarding payment of Rs. 5,700, the petitioner examined Shri Ramsahai (PW/21) and relied upon Ex. PW/42. Shri Ramsahai Master (PW/21) has stated that Shri Moolchand Katewa an Assembly candidate from Chirawa got a sum of Rs. 6,500 from Shri S. P. Khetan of Pilani in his presence and thereafter both Shri Moolchand Katewa and the witness travelled in a jeep to Chirawa. That in the way Shri Moolchand Katewa paid Rs. 5,700 out of the amount of Rs. 6,500 to the petrol dealer Om Prakash of Sajjan Singh Omprakash in his presence. In cross-examination, the witness states that the amount was paid to Shri Madanlal son of Shri Omprakash. The witness further says that he does not know whether the amount of Rs. 5,700 consisted of currency notes of Rs. 100 denomination or Rs. 10 denomination or Re. 1 denomination. He says that Shri Moolchand Katewa handed over the amount to Sajjan Singh Omprakash with a statement that the amount was Rs. 5,700.

In rebuttal, Shri Radha Krishan Birla (RW/1) says that he had no contact with Shri Ramsahai Master (PW/21) and, in fact, he does not know him. He further says that he never authorised Shri S. P. Khetan or any other person to make any payment of Rs. 5,700 as alleged by Shri Ram Sahai.

Ex. PW/42/1 is said to be a letter addressed by the respondent to Shri S. P. Khetan requesting him to please make the payment in cash for the petrol purchased by Moolchandji Katewa from the petrol pumps. It further says, "I understand from him that the total bills are worth about Rs. 6,500 from Sajjanagarh Omprakash Chirawa, and some other petrol pump at Chirawa. This you must do without fail in view of the discussions held between me and Shri Moolchandji yesterday evening. You need not consult anybody else in this behalf and you should talk to me after my return back from Bhadra."

Shri Radha Krishan Birla denies to have signed Ex. PW/42/1 and states that he had no discussions with Shri S. P. Khetan with regard to any payment referred

to in Ex. PW/42/1. Ex. PW/42/1 has not been held proved. Shri Moolchand Katewa (RW/7) denies having received Rs. 6,500 or any other amount in connection with the election expenses from Shri Radha Krishan Birla and denies payment of Rs. 5,700 to Sajjansingh Omprakash. He further says that Shri Ramsahai was working for Shri Radheyshyam Morarka. Shri Biharilal Misra (RW/9) also says that Shri Ramsahai was working for Shri Radheyshyam Morarka. This witness says that Shri Laxmikant was incharge of election office at Chirawa. This statement is contradictory to the statement of the petitioner according to whom Shri Vishwa Nath Pasari or Vishwa Nath Sharma were incharge of the Chirawa election office. The statement is also contradictory to the statement of Shri Vasudeo (PW/19) who says that Shri Radheyshyam Bagaria was incharge of the election office. He admits that a suit had been filed against him for his having misappropriated the funds of the charity and that suit was decreed on compromise. It is also remarkable that in the petition only Rs. 7,000 have been shown as having been paid to Sajjansingh Omprakash. The petitioner, however, seeks to prove through the evidence of witness is a payment of Rs. 10,700. The dealer and his account books have not been produced. The alleged payment, in the circumstances, cannot be held proved.

Shri Sanwalmal Runthala (PW/11) states—"During the election days, Jeep cars, cars and motors buses which were plied in connection with the election of Shri R. K. Birla were being kept there. 20 to 25 motor vehicles were being kept there. A temporary workshop had also been set up in Hathi-ka-nohra by the Pilani Industrial Corporation for the repairs of the motor vehicles that were kept in Hathi-ka-nohra. I saw these vehicles being kept in the Hathi-ka-nohra for about a period of two months just preceding the elections. Sometimes the number of the motor-vehicles increased. Shri Gopalram Yadav used to supply petrol to the drivers of the motor-vehicles to enable them to secure petrol supply from the petrol pump of the Pilani Industrial Corporation. These motor vehicles used to remain outside the nohra (Hathi-ka-nohra) at the time of delivery of petrol slips. I could see the distribution of the petrol slips from my shop. The petrol slips bore the signatures of Shri Kishorilal Tibrewal....." It needs only be observed that the petitioner's witness Shri Atmaram Chowdhary (PW/30) of the Pilani Industrial Corporation states that there was no khata of Shri Radha Krishan Birla in his account books. There is no proof of purchase of petrol on behalf of Shri Radha Krishan Birla from the Pilani Industrial Corporation. The evidence of this witness does not establish the liability of Shri R. K. Birla for the expenditure on petrol.

Shri Mahadevaram (PW/12)'s evidence is "there were four jeeps deputed to village Sultana for the election work (of the respondent) ... The petrol was being obtained from the drums kept at the house of Shri Kishanlal." The witness could not give the number of the jeep stationed at the village. At one place, he says that the jeeps were registered in the names of Shri Ratanlal Halwal, Shri Baluram Doraga and Shri Mahadeo Pujari. In re-examination, he says that the jeeps really belonged to Shri Birlaji (R. K. Birla) but in connection with the election they had been placed in-charge of these persons. There is no evidence as to the quantity of the petrol used. It is also not clear how the petrol was stored in the drums at the house of Shri Kishanlal. The evidence of this witness is too general to connect Shri R. K. Birla with any expenditure on petrol.

Shri Banwarilal Nathuramka (PW/14) claims to have worked for Shri R. K. Birla. He states to have incurred expenses on running messes on behalf of the respondent and also on organising a meeting at Rawalgarh on the 16th of February. He also states to have hired some vehicles in connection with the election of Shri R. K. Birla. He further states that he received initially Rs. 19,500/- and thereafter at a subsequent stage Rs. 9,800/- and odd after the election. The amount of Rs. 9,800/-, according to him, was on account of the hire charges of the jeeps and the expenses on the consumption of petrol and salaries of three persons, namely Shri Badri Prasad Joshi, Shri Baghey Khan Kayamkhani and Shri Radheyshyam Shah. The reference to petrol in his statement is too general to be seriously taken notes of. The statement of this witness was discussed to an extent in connection with File A and the evidence was not found satisfactory with regard to the most of the matters. I am not impressed by the evidence of this witness.

The petitioner's counsel, however, laid great emphasis upon the circumstantial evidence to prove a lot of expenditure on petrol. He in this connection, pointed out that the Birla concerns had laid down some policy decisions in connection with the election campaign of the respondent No. 1 and that in accordance with the policy decision, a number of vehicles were to be purchased in

the names of the officers of the Birla concerns and to be used in connection with the election. He also pointed out that the requirement of Shri Radha Krishan Birla in connection with the election campaign was for at least 65 vehicles. It was further urged that a number of vehicles were purchased in the name of the officers of Birla concerns from the United Motors, Jaipur, through Shri Shyamsunder Sabu (RW/15). In this connection, he wanted to rely upon a number of papers in file B and File A including some papers which have been exhibited. He also relied upon Ex. 291 to Ex. 354—abstract of the registration showing the registration of jeeps in the names of various persons containing address of Messrs. Brijlal Ramgopal. Reliance was also placed upon the account books of the firm M/s Brijlal Ramgopal. I have not taken note of papers which have not been exhibited and the papers which have not been proved. All the same, the letters Ex. PW/14/5 and Ex. PW/42/6 do show that at one stage the respondent showed his requirement for about 65 jeeps. There is also a reference to the obtaining of jeeps from the Caco and also the contribution of funds from Caco through cheques. The purchase of many vehicles in the names of officers of Birla concerns through M/s. Brijlal Ramgopal also stands proved. It will be, therefore, reasonable to hold that the jeeps and other vehicles were purchased in the names of officers of the Birla concerns and used in connection with the election. To this extent, the case on behalf of the petitioner appears reasonable and deserves to be accepted. It must be noted that the expenditure on purchase of vehicles was not relied upon by the petitioner in the election petition—and, therefore, he cannot be allowed to rely upon any alleged proof of such expenditure. The Petitioner's counsel wants to rely upon the proof of the expenditure on purchase of vehicles for use in connection with the election for the limited purpose of proving expenditure on petrol and repairs on the basis of calculations on estimates and to hold the respondent liable for it. There is no evidence whatsoever to show that the expenditure on purchase of petrol on these vehicles was incurred by Shri Radha Krishan Birla. On the petitioner's own showing the leading members of the Birla family and the officers of the Birla concerns were aware of the legal requirements as to the expenditure and that they, therefore, resorted to the facade of the swatantra party. If it was so, it will not be proper to expect that the expenditure could have been incurred personally by the respondent or by the Birla concerns through their officers. It appears proper to hold that the expenditure must have been incurred by the swatantra party.

5. *Expenditure relating to Hiring charges of vehicles.*—The relevant pleadings are contained in para 4(a) of the petition. The petitioner states,—

"The respondent No. 1 used about 50 hired jeeps for his election campaign between 13-1-67 and 23-2-67 and incurred an expenditure of about Rs. 75,000/- for the hire of the said jeeps. The registration number of the said hired jeeps are given in the List 'J' in which 57 vehicles have been mentioned."

The respondent in his reply denied the allegation and stated,—

"It is denied that this respondent hired 50 jeeps during the election period in connection with his election and spent an amount of Rs. 75,000/- as alleged."

The respondent made reliance upon the return of his election expenses Ex. 289 in which he has already shown the amount spent for hiring as Rs. 3,990/-.

The petitioner in support of his case relies upon the evidence of Shri Sanwalmal Runthla PW. 11, Shri Banwarilal Nathuramka PW. 14, Shri Nandlal Singh PW. 24 and Shri Bhimsingh PW. 28. He also relied upon Ex. PW. 14/5.

Shri Sanwalmal Runthla PW. 11 states that some of the jeeps had been hired. One such jeep belonged to Radheyshyam Chotia, one belonged to Dasrupurwa, one to Jawal and one to Prahlad Puhania. He gives vehicle number of Shri Prahlad Puhania as RJP. 633. His further evidence is that one vehicle from Surajgarh had No. RJP. 137. Shri Ramjilal was the driver. The witness admits that hiring agreements were not entered into in his presence. He does not speak of any payment. He is interested and the author of Ex. E which is against the respondent. His evidence stands rebutted by the respondent RW. 1 and Shri Shivkaran Mahajan RW. 5. Shivkaran says that Shri Durga Prasad Chotia, Shri Radhyeshyam Chotia and Shri Desrapurwala reside in his house and that they were working for Shri Radhey Shyam Morarka.

Shri Banwarilal Nathuramka PW. 14's statement is—

"I had hired three vehicles—one jeep and two station wagons. One jeep was hired from Shri Shiv Kumar Dhundia. One station wagon

was also hired from the same Shiv Kumar. The other station wagon was hired from Ram Avtar Aheer. I paid Shiv Kumar Dhundia hire charges for the jeep at the rate of Rs. 60/- per day for a period of 51 days, commencing from 1-12-66. I paid Shiv Kumar Dhundia hire charges of the station wagon at the rate of Rs. 90/- per day for a period of 20 days. I cannot specify the precise dates of this 20 days period without looking into the register. I do not remember how much was paid for the station wagon hired from Ram Avtar Aheer as that station wagon had been sent to Pilani."

In cross-examination he states,—

"I cannot give the registration number of the vehicles which were used by Shri Radha Krishan Birla, and myself and others accompanying us in connection with the election tour. I cannot give the names of the drivers."

In the absence of the number of the jeep it is difficult to connect his evidence with the allegations about the jeep in the List 'J'. The evidence of this witness was considered in connection with File 'A' and has been found unsatisfactory. I do not place any reliance on his evidence with regard to this point.

Shri Nandlalsingh PW. 24 was a worker of the Janta Party during the last elections. According to him, on 27th January, 1967 an election meeting was organised on behalf of Shri Radha Krishan Birla in Gandhi Chowk, Jhunjhunu. Referring to that meeting the witness states,—

"At the meeting I had some talk with Shri Kumbha Ram Arya in connection with the hiring of jeeps which belonged to the Janta Party workers. Thereafter, in my presence, Shri Kumbha Ram Arya, who was sitting on the dais along with Shri Radha Krishan Birla, told Shri Radha Krishan Birla that the jeeps belonging to the Janta Party workers should be got hired in connection with the election. Shri Birla then instructed Shri Subh Karan Jagnani to hire the jeeps of the Janta Party workers and thereafter he introduced me to Shri Subh Karan Jagnani. Thereafter I saw Shri Subh Karan Jagnani in the election office at Jhunjhunu alongwith two Janta Party workers—Shri Shiv Narain and Shri Phoolchand. In the election office Shri Subh Karan Jagnani hired the two jeeps belong to the Janta Party workers at the rate of Rs. 90 per day. Shri Subh Karan Jagnani was in charge of the election campaign of Shri Radha Krishan Birla at Jhunjhunu. The jeeps were hired with effect from the 20th of January, 1967. On the 21st of February, after the conclusion of the poll, I went to the election office at Jhunjhunu alongwith Shiv Narain and Phoolchand in order to obtain payment of the hire charges of the jeeps for these two jeeps owners. At the election office, it was given out that the jeeps were plied for 23 days and each one of the jeep owners had been paid Rs. 1,000/- in cash on some earlier occasion. On that occasion each of the jeep owners was paid Rs. 1,070/- in my presence in full and final payment of the hire charges of the jeeps. The payment was made in my presence by some Accountant under instructions from Shri Subh Karan Jagnani. The registration number of the jeep of Shiv Narain was RJP. 912 and the number of Phoolchand's jeep was RJP. 872."

In cross-examination the witness admitted (1) That there was no agreement in writing about the hiring charges; (2) I do not know on what date Shri Shiv Narain and Shri Phoolchand were paid. (3) I had my sympathy for Shri Radhey Shyam Morarka during the last election.

Besides the owners of the vehicles have not been examined

In rebuttal Shri Radha Krishan Birla RW. 1 denies to have hired the vehicles. He further says that he had no election office at Jhunjhunu and Shri Shubh Karan Jagnani was not in charge of any such election office. He says that he did not attend any election meeting at Jhunjhunu on 27th January, 1967. Shri Mahavir Prasad Halwai RW. 11 says that Shri Radha Krishan Birla did not organise any meeting. A meeting was organised by the Janta Party during the last week of January, 1967, but Shri Radha Krishan Birla was not present there. The evidence of the petitioner's witnesses cannot be considered reliable and sufficient to prove the payment of the hire charges by Shri Radha Krishan Birla.

Shri Bhimsingh (PW.28)'s statement is that he along with Harphool Jat went to Khetri election office and met one Kedia. He further says that Kedia authorised both of them to hire some jeeps and thereafter he and Harphool talked to Prahlad Puhania. He further says that thereafter all the three of

them went to Khetri election office and there the jeeps were hired at the rate of Rs. 60/- per day. The witness further says that the agreement for hire was entered a day or two before the Sankranti day. The witness states that on the third day of the polling he himself along with Harphool Jat and Prahlad Puhania went to Khetri and Prahlad Puhania was paid Rs. 2100/- by Kedia for hire charges of 35 days. In cross-examination, the witness states that the agreement for hire was oral and was not reduced into writing. One Ghanshyam was mentioned as the driver of the jeep but he could not give the name of his father or the place of his residence. The witness further stated that he saw Kedia for the first time at Khetri. He could not give the full name of Kedia. He also could not give the name of the mill where he was employed. In the absence of evidence of Prahlad Puhania or Harphool Jat or Ghanshyam driver, the testimony of the witness remains uncorroborated. The witness does not connect Shri Krishan Birla directly either with the authorisation of the incurring of the expenditure.

In rebuttal, Shri Radha Krishan Birla (RW/1) denies having hired the jeeps. He also denied that Shri Shyam Sunder Kedia was his worker at Khetri. Shri Kanhaiyalal (RW/2)'s evidence is that Prahlad Puhania was an active member of the congress and was working for Shri Radhey Shyam Morarka. Shri Motilal Mathur (RW/12) says that during the elections period Shri Shyamsunder Kedia was not at Khetri.

I must hold that the evidence is wholly insufficient to prove the incurring of the expenses by the respondent.

Mr. Pai also mentioned that the respondent in his return of election expenses Ex. 289 mentioned the hire of two jeeps. He has shown the expenses on hire charges as follows:—

Rs. 1140/-	to Shri Ganpatram Poilani of vehicle No. RJP 662 from 13-1-67 to 31-1-67.
Rs. 1470/-	to Shri Omprakash in respect of vehicle No. RJP 455 from 1-2-67 to 21-2-67.
Rs. 1380/-	to Shri Ganpatram Yadav in respect of vehicle No. RJP 662 from 1-2-67 to 23-2-67.
Rs. 3990/-	

He has not accounted for the hire charges for one jeep from 13th January 1967 to 31st January 1967 and that accordingly an amount of Rs. 1,140 at least should be treated as having been spent.

I do not find anything in the statement of the respondent (RW/1) to the effect that three vehicles were used throughout the period from 13th January 1967 to 23rd February 1967. It is likely that out of the two vehicles one was hired at a later date. The argument in this connection cannot be accepted.

6. *Expenses on account of repairs.*—The petitioner's case that the respondent incurred expenses in connection with the said jeeps and cars during the period from 13th January 1967 to 23rd February 1967. This work was done at the workshop of Pilani Industrial Corporation at Pilani and at several other places in the constituency. The said expenses amounting to Rs. 50,000 were incurred and authorised by the respondent No. 1. The bill of the aforesaid work at Pilani Industrial Corporation amounted to Rs. 40,000 and that of Bholaram Mistri of Nawalgarh amounted to Rs. 5,000 and that of Radhey Shyam Mistri of Jhunjhunu amounted to Rs. 5,000.

The respondent with reference to the hire charges admits to have hired two vehicles and denies having hired any vehicle besides the two referred to in the election expenses Ex. 289. The allegations with regard to this corrupt practice are verified on information received from persons whose names have been given, as follows,—

Shivnarain Singh, M.L.A.
 Basudeo
 Ramavtar
 Satya Narain
 Ram Narain Dhabhai
 Damodar
 Matadeen
 Banwarilal
 Parmeshwar Lal Khetan & others.

Out of these persons Shri Banwarilal Nathuramka PW. 14 and Shri Matadin Bhageria PW. 42 appeared in evidence. They do not speak anything about repairs.

The petitioner however relied upon the following evidence.—

PW. 4 the petitioner himself supports the allegations in the petition. He, however, has no personal knowledge. Shri Kanhaiyalal PW.6 states to have seen motor vehicles being repaired at the workshop of Shri Radhey Shyam, Shri Sanwal Mal Runthla PW. 11 states that a temporary workshop had been set up in Hathi-ka-nohra by the Pilani Industrial Corporation for the repairs of the motor vehicles that were kept in Hathi-ka-nohra, and that he saw the vehicles being kept there for about a period of two months just preceding the elections. The evidence of Shri Sanwarimal Runthla is too general and does not advance the petitioner's case. The petitioner called Shri Atmaram of the Pilani Industrial Corporation PW. 30 but he could not prove any payment to him on account of repairs. Shri Virendra Kumar PW. 15, however, gives direct evidence of expenditure having been incurred on repairs. He states,—

"I got three jeeps of Nawalgarh election office repaired at the workshop of Bholaram Mistri on different occasions and I got payment made to Bholaram Mistri by Kamla Prasad Kabra. For these repairs Shri Kamla Prasad Kabra paid Rs. 800 to Bholaram Mistri and Rs. 1,200 were paid on another occasion. I do not remember the date of payment of Rs. 800. The amount of Rs. 1,200 was paid in the first week of February, 1967 and the earlier payment was made 4 or 5 days before that."

In cross-examination the witness stated,—

"I have known Bholaram Mistri for the last 8 or 9 years. I do not know whether Bholaram Mistri maintains accounts or not. I had no occasion to visit the workshop of Bholaram Mistri."

Bholaram Mistri was not cited and examined as a witness by the petitioner. The evidence of Shri Virendra Kumar has already been discussed earlier and not much reliance can be placed on his evidence. The evidence with regard to incurring of expenses on repairs is not worth reliance. It is difficult to hold that the petitioner incurred any expenditure.

7. *Expenditure on Telephones and Telegrams.*—The petitioner's allegations are—

The respondent No. 1 also incurred considerable expenses between 13th January, 1967 and 23rd February, 1967 over the trunk call and telegram charges which he and his canvassers and supporters made during said period from places in the said constituency to other places for getting men and materials for conducting and co-ordinating the election campaign of respondent No. 1. The said expenses amounted to about Rs. 5,000.

The respondent No. 1 had taken few temporary telephone connections at Pilani and other places for his election campaign. Some of the said connections at Pilani were given telephone numbers 105, 106 and 107. Besides, the respondent No. 1, his agents, canvassers and supporters were using for the purpose of his election campaign the telephones at Pilani, among others, bearing numbers 81, 75, 15, 21, 4 and 5 (installed at Birla House of Birla Haveli, Pilani) and a telephone bearing No. 53 and standing in the name of Shri D. P. Mandelia and also the telephones bearing numbers 4 and 16 and others at Nawalgarh. All the said telephones were constantly used between 13th January 1967 and 23rd February 1967 for the election propaganda of the respondent No. 1 by himself as well as his agents, canvassers and supporters by consent and authorisation of respondent No. 1.

These telegrams were sent from Jhunjhunu, Pilani and Nawalgarh for election purposes. Full particulars are with Posts and Telegraphs Department.

The respondent denied the allegations. His reply is.—

"It is denied that this respondent incurred any expenditure of Rs. 5,000 or any other amount on any telegrams or trunk calls in connection with his election during the election period as alleged. It is denied that this respondent incurred any expenses on trunk calls and telegrams used and sent by any of his canvassers or supporters, if any, during the election period in connection with the election of this respondent. This respondent never took any telephone connection at Pilani or at any other place in the constituency in question for his election campaign. It is denied that this respondent took the telephones

bearing numbers 105, 106 and 107 or any other temporary or permanent telephone connections at any time during the election period either at Pilani or any other place in the constituency in question. This is also denied that any person or agent had any consent of this respondent or of his election agent in the use of any telephone Nos. 81, 75, 15, 21, 4, 5 and 53 at Pilani and telephone Nos. 4 and 16 at Nawalgarh or any other telephone number at any other place in the constituency in question and in making any expenditure thereon in connection with the election of this respondent. This respondent did not incur any telephone trunk call and telegram expenditure during the election period in connection with his election. This respondent never consented or authorised any incurrence of any expenditure as alleged by the petitioner. The petitioner has not given any details of the alleged expenditure and the same being vague cannot be allowed to be proved by the petitioner."

The petitioner relied upon the oral evidence in this connection which is provided by the petitioner himself PW. 4. He says that the respondent incurred expenses of Rs. 5,000 to Rs. 6,000 for trunk calls during the election period for certain places with the Jhunjhunu constituency. As the petitioner did not submit with the election petition the list of the documents upon which he relied in support of the election petition nor did he mentioned these document while submitting the list of witnesses. The witness was summoned only to produce records of the payments of the bills. In these circumstances, it was considered too late to permit the petitioner's counsel to require the witness to trace out the applications and to produce them in Court.

On 24th September 1968 Shri Shyam Beharilal appeared and produced original Kalama-zoo sheets showing the entries of the payments of the bills in respect of the individual members for the period October, November and December, 1966, and January, 1967. The counsel for the respondent objected to the production of the sheets for the period before 13th January on the ground that the expenditure for the period prior to 13th January is not relevant. The counsel for the petitioner however, wants the register to be kept on record in order to enable him to cross-examine the respondent's witnesses. The record was kept on record for this limited purpose.

On 3rd October 1968, Shri B. N. Sinha, Senior Accountant, Telephone (Revenue), Jaipur, appeared. He was permitted to produce copies of the entries of the ledger accounts in respect of Telephone Nos. 4, 5, 15, 21, 53, 75, 81, 105 and 106 at Pilani and Nos. 4 and 16 at Nawalgarh. They were marked Z-1 to Z-19. Subsequently on miscellaneous application No. 59 trunk call tickets and telephone bills were exhibited as Ex 520/1 to Ex. 520/560 being public documents. No order was passed for documents initially marked Z-1 to Z-19 but on the same principles they are being treated as documents on record duly exhibited. On the basis of the registers and telegrams in connection with his election campaign.

In cross-examination he stated,

"I have stated that the respondent No. 1 incurred an expenditure of Rs. 5,000 on the trunk calls and telegrams on the basis of information received. I have no personal knowledge. The information was given to me by several persons. I do not remember which person gave what kind of information. I cannot say what amount was spent on telegrams and what amount was spent on telephones. I cannot give the names of the persons who were hirers of Telephone Nos. 3, 15, 21, 75, 81 and 4."

The witness also reform to one or two telegrams and in that matter he is supported by Shri Sanwar Mal Runthla PW. 11. The oral evidence is vague, general and insufficient. The petitioner, however, summoned,—

1. Sub Divisional Officer, Telephones, Jaipur.
2. Sub Divisional Officer, Telegraphs, Bikaner.
3. Telegraph Officer, Vidya Vihar, Pilani.

However, one Uttamchand Jain appeared in Court on 16th September 1968 and produced trunk call tickets and the duplicate copies of the trunk calls bills. The witness also brought a summarised statement about the issue of bills, the amounts for which the bills were prepared and the dates of the payment. The summary was based upon the original ledger maintained by the Department and summary was not stated to be true and faithful copy of the contents of the original ledger.

The witness was directed to cause the production of the copy of the entries of the relative pages of the ledger book. The summary was returned. At that stage the counsel for the witness was also directed to produce on record the original applications which were received for temporary telephone connections and the trunk calls tickets the petitioner's counsel prepared statements showing payment of bills for the various telephones, as follows,—

Ex. No.	Date of bill	Period	Amount	Paid on
<i>Pilani 4 (G.D. Birla)</i>				
520/20	25-2-67	16-2-67 to 10-2-67	1,462.00	23-3-67
520/21	25-3-67	11-2-67 to 10-3-67	6,206.00	24-4-67
<i>Pilani 53 (D.P. Mandelia)</i>				
Z/15	25-2-67	16-1-67 to 10-2-67	3,767.10	10-5-67
520/27	25-3-67	11-2-67 to 10-3-67	3,868.05	12-4-67
<i>Pilani 81 (R. K. Birla)</i>				
Z/17	25-2-67	16-1-67 to 10-2-67	52.60	10-3-67
520/2	25-2-67	D.O.	126.00	3-3-67
520/3	25-3-67	11-2-67 to 10-3-67	125.50	29-3-67
<i>Pilani 105 (R.B. Das Birla)</i>				
520/47	25-2-67	16-1-67 to 10-2-67	718.95	8-3-67
520/58	25-3-67	11-2-67 to 10-3-67	361.65	13-4-67
<i>Pilani 106.</i>				
520/49	25-2-67	16-1-67 to 10-2-67	448.80	8-3-67
520/50	25-3-67	11-2-67 to 10-3-67	680.65	13-4-67
<i>Nawalgarh 4 (Prasad R. Parakash)</i>				
520/9	25-2-67	16-1-67 to 10-2-67	25.00	3-3-67
520/10	25-3-67	11-2-67 to 10-3-67	21.00	31-3-67
<i>Nawalgarh 16</i>				
Z/10	25-2-67	16-1-67 to 10-2-67	560.60	28-2-67
520/16	25-3-67	11-2-67 to 10-3-67	264.60	28-3-67

He also prepared statements showing the bills for the periods preceding 6th September 1966 and succeeding 13th January 1967 on the basis of registers which were kept for the limited purposes of cross-examination. So far as the respondent's telephone number is concerned, the expenditure comes to Rs. 251 only and is very insignificant. Of course, in respect of Shri G. D. Birla and Shri D. P. Mandella the expenditure is substantially large. In my opinion, the petitioner cannot derive any substantial help from such statements. There is no evidence to show whether the various calls for which the bills were paid were in connection with the elections and who were responsible for these calls. At any rate, there is nothing to show that Shri Radha Krishan Birla is responsible for the payment of all these bills in connection with these telephone numbers. Telephone Nos. 105 and 106 had been installed in Vishram Vatika, Pilani which according to Thakur Raghuvir Singh PW. 32—the petitioner's own witness, were used for the election office of the Swatantra Party in the year 1962 as also in the year 1967. Some of the petitioner's own witnesses no doubt mention it as the central election office of Shri Radha Krishan Birla but their statements cannot be accepted particularly on the petitioner's own showing that Birla concerns used Swatantra Party for election purposes to screen the election expenses. Various suggestions were made to the respondent's witnesses in cross-examination but nothing useful has been brought out. In this circumstances, I hold that the petitioner has not succeeded in proving any expenditure by the respondent on telephones and telegrams.

8. *Expenses on Talkie Film.*—The petitioner's case is set out in para 4(b) as follows:—

"The respondent No. 1 got made a film of about four meetings which were organised by him at Jhunjhunu, Singhana and Gudha in the said constituency and also got the speeches of Shri Kumbharam Arya and others delivered at the said meetings supporting his candidature tape-recorded. Out of the said film and tape-recorded speeches, a full length talkie film was prepared and was shown at several villages such as Sadulpur, Bhadra, Dabri, Jhunjhunu, Nawalgarh, Pilani and other places in the said parliamentary constituency. A motor van carrying the Projector, Amplifier and other accessories with 3 or 4 persons used to move in the constituency for more than 15 days and exhibit the said film. The respondent No. 1 between 13th January, 1967 and 23rd February, 1967 spent nearly Rs. 20,000 for exhibiting the same for over 15 days between 2nd February 1967 to 17th February, 1967 in the constituency in the said mobile van. The said cinema film was got prepared in the end of January, 1967 through one Shri Kishore Parikh of Messrs. Hindustan Films, New Delhi."

The respondent in his written statement denied having incurred the alleged expenses and stated:—

"It is denied that this respondent incurred an alleged expenditure of Rs. 20,000 in getting any talkie film prepared and a further sum of Rs. 10,000 for exhibiting the same through alleged Shri Kishore Parekh of Messrs. Hindustan Films, New Delhi or any other person. This respondent has not known any concern with the name of Hindustan Films, New Delhi. The allegation of the petitioner is baseless and imaginary. No particulars have been furnished by the petitioner as to the name of the person to whom the alleged payment was made, the date of alleged payment and place of alleged payment. The petitioner has also not given the particulars of the motor van carrying the alleged projector, amplifier and other accessories and also he has not given the names of the persons carrying such alleged articles. The dates of alleged expenditure and the places of exhibition of the alleged talkie film have not been furnished. The allegation being vague and wanting in particulars deserves to be struck off."

As the petitioner failed to give particulars in connection with the expenditure on the exhibition of the talkie film the issue was confined to the extent of preparation of the talkie film only. The petitioner named some persons including Shri Banwarilal Nathuramka (PW/14) and Shri Matadin (PW/42) as the persons from whom he received information with regard to the allegations relating to the expenditure. Shri Banwarilal Nathuramka (PW/14) and Shri Matadin (PW/42) do not say anything about the expenditure on the preparation of the film. Others have not been produced. The film is said to have been got prepared at Messrs. Kishori Park. They were cited as witnesses but not examined. The three witnesses examined by the petitioner namely, Shri Magraj Patodia (PW/4), Shri Kalicharan (PW/5) and Shri Kanhaiyalal (PW/6) only relate to exhibition of the film. The petitioner also relied upon some documents Ex. PW 33/63 and Ex. PW 42/12 and some other papers in files A and B. They have not been proved and they also relate to the exhibition of the film. The petitioner's case thus has not been substantiated.

9. *Expenses on Employees.*—The petitioner's case in this regard is set out in para 4(f) of the petition. The petitioner has stated,

"The respondent No. 1 had arranged for about 3,000 employees of the several companies of the house of Birlas to go to Jhunjhunu Parliamentary Constituency for his election campaign. The respondent No. 1 incurred or authorised the expenses of the travelling of said employees and the expenses for their stay for a period of over a month between 13th January, 1967 and 23rd February, 1967 in the said constituency. The said employees were posted in different villages in the constituency and set up offices for conducting the election campaign of the respondent No. 1 and carried on such campaign for him between 13th January, 1967 and 23rd February, 1967. The expenses for travelling of said employees to and from the said constituency calculated at the average rate of about Rs. 200 per head came to about Rs. 6,00,000 and the expenses on account of salaries paid to these employees and for their stay for the said period

came to more than Rs. 10,00,000. The respondent No. 1 incurred or authorised this expenditure during the above period. The names of some of the said employees are given in aforesaid lists 'A' and 'C'. List 'A' contains the names of 20 persons and list 'C' contains the names of 451 persons."

The respondent in reply stated—

"Averments made in paragraph 4(f) of the amended petition are denied. This is denied that this respondent arranged for about 3,000 employees of several companies to come to Jhunjhunu Parliamentary Constituency for his election campaign. This is denied that this respondent incurred or authorised the incurrence of the expenditure of the travelling of the said employees. It is also denied that this respondent incurred or authorised the incurrence of any expenditure for the stay of the alleged employees for any period in the constituency in question or the alleged travelling of the alleged employees in any manner and on account any salary as alleged to have been paid to any such employees. It is denied that this respondent incurred an expenditure of Rs. 6,00,000 and Rs. 10,00,000 as alleged by the petitioner in this paragraph of the amended petition. It is denied that this respondent posted any such alleged employees in different villages in the said constituency and set up any offices for conducting the election campaign. As submitted earlier, this respondent was a candidate sponsored by Swatantra party and the party had its own cause in the success of this respondent. The said party made its own propaganda on party level which benefited this respondent and other candidates set up by it in respect of Assembly Constituencies which were included in the said Parliamentary Constituency. No particulars have been furnished by the petitioner as to the actual amount alleged to have been incurred upon any person mentioned in the lists 'A' and 'C' and also dates of incurrence of alleged expenditure with respect to each person mentioned in lists 'A' and 'C'. Question of making application of average rate to calculate the alleged expenditure is not warranted by law and in the absence of full particulars and details of the alleged actual expenses on each person the allegation cannot be enquired into.

In the verification appended to the lists 'A' and 'C' it has not been mentioned which parts of the allegations are true to the personal knowledge of the petitioner and which parts are true to information. It has not been mentioned in the verification as to which parts of the verification have been believed to be true on information alleged to have been received from Nagarmal, Satnarain and Ram Avtar. Verification in respect of lists 'A' and 'C' is not in accordance with law, the allegation contained in lists 'A' and 'C' therefore deserve to be struck off."

It may be noted in the beginning that by the order of this Court dated 30th August 1967 the petitioner was permitted to prove the expenses only in connection with 481 persons given in the list. List A was verified on information received from Shri Ramavtar. He was cited by the petitioner as one of the witnesses but when he appeared in Court on 10th May 1968 he was given up by the petitioner. List C was verified on information received from Shri Nagarmal, Shri Satyanarain and Shri Ram Avtar. None of these persons were examined. During the course of arguments Mr. Pai could point out 24 persons only in respect of whom some evidence is on the record. According to the respondent, 50 persons out of 124 do not find place either in the list A or list C. I consider it unnecessary to enter into these controversies as even if the 60 persons are ignored still there remains sufficient number. The petitioner had no personal knowledge of the expenditure done on the various persons. He has given the expenditure on the basis of his estimate having regard to the status and the habits of living of these persons. An analysis of the whole evidence shows that most of the witnesses do not say that Shri Radhakrishnan Birla called them or that they came at the request of Radha Krishan Birla. None of the witnesses say that any payment was made by the respondent. Sanwalram Meena (PW/8) mentioned some persons but says that the payments were made by the T.I.T. (Technological Institute of Textiles, Bhiwani). Shri Vasudeo (PW/19), Shri Ram Sahai (PW/21), Shri Isar Mali (PW/22) and Shri Prabhatilal (PW/38) state about some persons working in Birla concerns having arrived in Jhunjhunu constituency but they are not in a position to state precisely the places wherefrom they came. From a careful analysis of the evidence it appears that officers of the Birla concerns and some employees did arrive in the Jhunjhunu constituency and worked presumably through the Swatantra Party election offices. Their expenses were borne

either by the concerns or the Swatantra Party out of the funds received as contributions from the concerns including the Birla concerns. The respondent is not proved to have incurred any expenditure on these employees.

10. *Expenses on Election Offices.*—The relevant allegations are contained in para 4(g) which reads as under:—

"The respondent No. 1 set up about 150 offices in the Jhunjhunu Parliamentary Constituency for his election campaign. Through these offices which were manned by the employees brought from several companies belonging to the house of Birlas, the respondent No. 1 carried on and conducted his election campaign between 13th January, 1967 and 23rd February, 1967, *inter alia* by distributing leaflets, pamphlets, badges and balloons and pasting and displaying posters, cartoons and flags, by organising meetings and programmes of singing party and films in the constituency. The expenses of the said 150 election offices for the entire period between 13th January, 1967 and 23rd February, 1967 amounted to about Rs. 500 each and came to about Rs. 75,000."

The respondent in his written statement stated,

"It is denied that this respondent set up any alleged offices for his election campaign in the Parliamentary constituency in question. This respondent relied more upon personal contacts with the election of the constituency in question and this went a long way to help this respondent to have success at the polls. This is denied that this respondent opened any offices, put in men therein in the election held in connection with his election and in any way incurred any expenditure in getting the distribution of leaflets, pamphlets, badges and balloons and pasting and displaying posters, cartoons and flags as alleged. This is denied that this respondent incurred any expenditure of Rs. 75,000 as alleged. This respondent craves reference to the order of this Hon'ble Court dated 30th and 31st August, 1967 and particularly the discussion on item No. 9 of the schedule of proposed amendments. This Hon'ble Court held by its said order that the allegations of the petitioner contained in this paragraph of the petition are vague, general and lack in particulars. The petitioner has merely reproduced the paragraph as contained in the original petition without giving particulars as required by him by the order of this Hon'ble Court dated 30th and 31st August, 1967. No names of the places where the offices are alleged to have been set up, the amount of expenditure incurred thereon, dates of incurrence of alleged expenditure, persons to whom the alleged expenses were paid, have been given and in the absence of these particulars and other particulars the allegation deserves to be struck off."

The oral evidence of the petitioner is not consistent. Some of the witnesses of the petitioner do state that the respondent had election offices at several places but some of the witnesses of the petitioner, namely, Shri Girdhargopal Advocate (PW/17), Shri Sanwalmal Runthla (PW/11) and Thakur Raghuvir Singh (PW/32) state that the respondent had no election offices and that they were Swatantra party offices at Pilani and at various other places. The petitioner's counsel himself on the basis of references to election offices in file B stated that they were variously described as "Birla's election offices", "our offices" and "Swatantra party election offices."

The respondent denied having had any election office. Shri Kanhaiyalal Advocate Khetri RW/2 stated, "I did not see any election office of Shri R. K. Birla, respondent No. 1, at Khetri. There was an election office of Swatantra party housed in a building known as Sahon-ki-Havelli near Babulaji's Nohra. The house where the election office was housed belonged to Bilasrai Shah." In cross-examination he was asked, "I put it to you that the election office at Sahon-ki-Havelli (House of Bilasrai) was initially known as Radhakrishnan Birla's election office upto 25th January 1967 and then it was changed as the Swatantra party's election office" to which he replied, Radhakrishnan Birla was not known in Khetri upto 25th January 1967. Thakur Raghuvir Singh started an election office at Sahon-ki-Havelli some 25 days before the election. From the very beginning the office was styled as election office of Swatantra Party."

Shri Madanchand Jangid (RW/3) says, "There was no election office of Shri R. K. Birla in the house of Shri Surajmal Mohta. There was of course an election office of Swatantra party at Rajgarh. It was in a building belonging to Shri Natmal Surena in the Bazar near the clock tower." In cross-examination he was

questioned, "I put it to you that R. K. Birla had three election offices at Rajgarh—one at the residence of Surajmal Mohhta, other in Bhawani Devi Charity Trust Hospital and third in the house of Nathmal Surena" to which he replied, "Suggestion is denied. There was election office of Swatantra party in house of Nathmal Surena."

Shri Mannalal Dalmia (RW/4) stated "There was no election office of Shri R. K. Birla in the haveli of Babulal Choudhari. There was no election office of any candidate or party in that house. The election office of Swatantra party was established in the Nohra of Babulal Choudhari." In cross-examination he stated, "The election office of Swatantra Party was established in the Nohra of Babulal Choudhari. The workers at election office in Babulal's Nohra were working for Swatantra party."

Shri Shivkaran (RW/5) states, "The election office of Swatantra party was established in Lalkothi Vishram Vatika, Pilani." In cross-examination, he states, "The election office of Swatantra party was in Lal Kothi."

Shri Viswanath Pasari stated "Pasariyan ki haveli belongs to my first cousin Banwarilal Pasari. I did not see the election office of R. K. Birla in this haveli. Swatantra party had its election office in Pasariyan ki haveli. In cross-examination he states that Shri Moolchand Katewa was incharge of Swatantra party election office at Pasariyan ki haveli."

Shri Moolchand Katewa (RW/7) admits that the Swatantra party had its election office in Pasariyan ki haveli and that he was incharge of that office. He further says that the Swatantra party office at Pilani was in Vishram Vatika, Lal Kothi.

Shri Murlimanohar Basotia (RW/8) in cross examination states that the Swatantra party election office was at the haveli of Hemrajji.

Shri Biharilal Misra (RW/9) states "I did not see any election office of Shri R. K. Birla in Pasariyan ki haveli."

Shri Megh Singh (RW/10)'s statement is "The election office of Swatantra party at Dudda was in Dharamshala near Higher Secondary School building."

Shri Mahabir Prasad Halwaye (RW/11) has been produced to depose that he did not see any election office of Shri R. K. Birla in nohra called "Tibrewalka Nohra near Tal." He says that there was of course an election office of Swatantra party there." He further says "There was no election office in that Nohra before the establishment of Swatantra party election office in that nohra."

Shri Motilal Mathur (RW/12) states, "Swatantra party election office was in Sohan ki haveli. It was established in third week of January, 1967 before the establishment of Swatantra party office in that haveli, there was no election office of any party or candidate in that haveli."

Shri Ramniwas Vaid (RW/13) states, "I did see election office of Swatantra party at Vishram Vatika. The election office was in Lal Kothi, Vishram Vatika."

There is thus no evidence to establish the expenditure in these offices by the respondent.

11. Expenses on Meeting:

The relevant allegations in this connection are mentioned in para 4(j) stated,

"The respondent No. 1 organised about 20 other meetings where leaders of Swatantra party, Jansangh and Janta party of Rajasthan from Jaipur and other parts of the State were invited by respondent No. 1 to address. The respondent No. 1 incurred the travelling and other expenses of these leaders. The Rajmata of Gwalior was one such invitees who visited the constituency and addressed a public meeting at Nawalgarh on or about 16th February, 1967. The Rajmata of Gwalior came by the said Dakota plane from Gwalior to Pilani and from there she went by car to Nawalgarh to address the said meeting and returned by car to Pilani. The respondent No. 1 spent a large amount of money for organising the said meeting which was addressed by the Rajmata. The venue of the meeting was gaily decorated with flags, banners, buntings, balloons and tube lights. Thousands of people were brought from the villages by buses and trucks to attend the said meeting. The propaganda for attending the said meeting was carried on 7 to 8 days in advance through jeeps with loud-speakers throughout the villages round about Nawalgarh. The said meeting was addressed among others by Rajmata of Gwalior, respondent No. 1, Shri D. P. Mandelia and Rawal Madan

Singh of Nawalgarh. The respondent No. 1 incurred a total sum of about Rs. 10,000/- in connection with the said meeting wherein the speakers canvassed for votes in favour of the respondent No. 1. Similarly leaders of Janta party of Rajasthan, Choudhary Kumbharam Arya, Ram Karan Joshi and Raja Harish-chandra of Jhalawar, among others, visited the constituency at the request of the respondent No. 1 and campaigned in his favour. Between 13th January, 1967 and 23rd February, 1967, they addressed several meetings in the constituency which were organised by the respondent No. 1. In connection with the said meetings, the respondent No. 1 incurred expenses of about Rs. 10,000/-. The names of some of the places where the said meetings were held are mentioned in List 'I'. List 'I' makes mention of the meetings. Serial No. 4 has been repeated twice and, therefore, it relates to 17 meetings, 2 at Nawalgarh and the rest at various other places,

The respondent in his reply stated,

"It is denied that this respondent arranged 20 meetings as alleged and incurred any expenditure thereon. Parties and different leaders of different States had convened meetings and as and when they invited this respondent to speak he did go and make speeches in favour of his candidature and soliciting the votes of the voters of the constituency in question. The respondent did not incur any expenses on any such meetings as alleged. It is true that Rajmata of Gwalior visited Nawalgarh and she spoke in a meeting against the Congress. It may be mentioned that Rajmata herself was a candidate in Guna Parliamentary Constituency with Swatantra Party symbol where she defeated the Congress candidate. She had not been invited by this respondent and no incurrence of expenditure was made by this respondent either on her visit or on the meeting in which she had come and addressed. It is denied that this respondent incurred any expenditure of Rs. 10,000/- as alleged. Each and every allegation of fact made by the petitioner in this paragraph of the amended petition is denied and the petitioner be put to strict proof thereof.

This is denied that this respondent incurred any travelling and other expenses of any leaders who visited the constituency in question or any part thereof or addressed any meetings therein. This respondent denies that he incurred or authorised the incurrence of any expenditure mentioned in the list 'I'. The allegations are still vague and indefinite inasmuch as full particulars have not been furnished in respect thereof. Dates of alleged payments or authorisation of alleged incurrence of expenditure, names of the persons to whom the alleged payments were made, have not been given. In the absence of such particulars amongst others, the allegations should be struck off.

The verification in respect of list 'I' of the amended petition is also not in accordance with law inasmuch as it has not been stated as to which part of the information contained in the said list 'I' is true to the petitioner's knowledge and which other part is true to information received and believed to be true. The allegations consequently deserve to be struck off."

No evidence has been led with regard to the meetings at places Nos. 3, 4 (first), 5, 8, 10, 13, 14, 15 and 16 in the list 'I'. Regarding item Nos. 1, 6, 9 and 12 there is no evidence of any expenditure having been incurred. The petitioner's witnesses only say that meetings were held. The respondent's witnesses say that no meetings were held. List 'I' was verified on the information received from Satya Narain who though cited was not produced.

(a) *Meeting at Nawalgarh:*

The petitioner has made an attempt to lead evidence of expenditure incurred on the second meeting at Nawalgarh. This meeting was held on 16th February, 1967. Shri Banwarilal Nathuramka (PW/14) says that the meeting was held on 16th February, 1967 and Rajmata Gwalior had come. He further says that he incurred an expenditure of Rs. 1500/- in organising the meeting. He further states to have paid Rs. 800/- to Kedar Chejera for preparing gates. This witness has been held unreliable. Shri Kedar Chejera to whom the money is alleged to have been paid, has not been examined. The petitioner's own witness Shri Sanwermal (PW/26) says that the Swatantra party as such was expected to bear the expenses of the meeting held at Nawalgarh. The petitioner's another wit-

ness Thakur Raghuvirsingh (PW/32) says that the Rajmata of Gwalior came to Nawalgarh at the invitation of Swatantra party. The Swatantra party used to organise the election meetings.

The respondent says that neither he nor his election agent did incur or authorise any expenditure on meetings. The meeting at Nawalgarh on 16th February, 1967 was organised by the Swatantra party.

Thus, the petitioner's case with regard to this meeting does not stand substantiated.

(b) Meeting at Udaipur Wati:

The only witness examined in this connection is Shri Bholaram (PW/23). His evidence is that on 14th January, 1967, an election meeting was held by Shri Birlaji and at that time his bus and three other buses were hired for bringing the persons. He further states that he was paid Rs. 100/- by Bhagi Mahajan. In cross examination he says that his Bus number is RSL-1439. This bus number does not find place in the list 'J' attached to the petition which is a list of the jeeps alleged to have been hired by the respondent No. 1. The witness cannot say the registration number of the other buses. According to this witness, payment is said to have been made by Shri Bhagi Mahajan and not by Shri R. K. Birla. The witness further admits that he is a member of Congress and believes in Congress ideology. He worked as the polling agent of Shri Radhey Shyam Morarka vide Ex. A-21.

The respondent (RW/1) denies to have arranged any meeting at Udaipur wati. He further says that Bhagi Mahajan is not known to him and he was not working for him during the elections.

(c) Meeting at Chirawa:

The evidence of expenditure has been given in connection with the meeting at Chirawa held on 28th January, 1967 in the Bazar. Shri Vasudeo (PW/19) has been examined to give evidence. His statement is that on 28th January, 1967 an election meeting was held and he assisted Ram Narain Sharma Bhaiwala He says an amount of Rs. 1,000/- was incurred Rs. 250/- hire charges of trucks, Rs. 100/- pandal, Rs. 200/- gates, Rs. 150/- refreshment and Rs. 50/- to labourers. He says that the amount was paid by Shri Laxmi Kant Misra to Shri Ram Narain Sharma Bhaiwala. When questioned in cross-examination he could not give the registration numbers of the truck which brought the people to Chirawa. Here it will be pertinent to mention that list 'I' mentions bus whereas he mentions use of truck. He could not give the names of the drivers of the trucks, names of the owners of the trucks also as to who hired the same. He also could not give the names of the cloth dealers who were paid. He could not even give the name of the persons who were paid Rs. 250/- in connection with the meeting.

Shri Purshottam Lal Asru (PW/34) says that Ram Narain Sharma Bhaiwala was working for Shri Radhey Shyam Morarka.

Shri Ram Narain Sharma Bhaiwala to whom the payment is alleged to have been made, has not been examined even though he was cited as a witness. The solitary evidence of the witness Shri Vasudeo PW/19 is not at all a reliable and sufficient to establish the expenditure.

Meeting at Pilani:

The next meeting to which reference may be made was held at Pilani on 24th January, 1967. Shri Sanwalmal Runthla (PW/11) has been examined to prove the expenditure. He says that the meeting was organised by Shri R. K. Birla 17 or 18 days before the polling, and that an amount of Rs. 250/- was paid to Bagaria Bus Service by Bajranglal Gupta towards hiring charges of vehicles for bringing the voters to attend this meeting. The witness is highly interested because he is author of Ex "E" which he published against the respondent.

Shri Manoharlal Ojha (PW/7) Executive Officer, Nagar Palika, Pilani, says that Shri Sanwal Mal Runthla was working for the congress.

The respondent as RW/1 denies to have organised any meeting at Pilani. Shri Vishwa Nath Pasari (RW/6) says that Shri R. K. Birla did not organise any election meeting at Pilani but Swatantra party of-course, organised one election meeting.

The evidence of Shri Sanwal Mal Runthla in the circumstances cannot be accepted and the petitioner's case on this aspect stands unsubstantiated.

12. Expenses on Running Messes:

The allegation in this connection was contained in Para 4(b), which reads, as under,—

"The Respondent No. 1 set up nearly 80 messes at different places in the constituency between 13th January, 1967 and 23rd February, 1967, where his convessers and others, including the electors were fed and entertained. At some of the messes about 100 people per day used to take their meals. The expenses of these messes amount to about Rs. 2,00,000/-. The names of some of the places where the said messes were set up are given in the list 'G'. In list 'G' he has made mention of 28 messes at different places. He has done so on the basis of information received from Shri Satya Narain."

The respondent in his written statement stated,—

"It is denied that this respondent set up 80 messes or any other number of messes in different places in the constituency in question during the election period and he incurred an expenditure of Rs. 2,00,000/-, as alleged. This respondent craves reference to the order of this Hon'ble Court dated 30th and 31st August, 1967 and particularly on the discussion in respect of item No. 10 of the Schedule of proposed amendments and submits that the full particulars as required of the petitioner have not been furnished. Names of the cooks, dates of alleged payments to the cooks or servants, date of purchase of ration, dates of contract, dates of payment to the alleged contractor, have not been given by the petitioner. Dates of purchases, names of the parties from whom the alleged purchases were made have not been furnished by the petitioner and in the absence of such particulars and other particulars the allegations are vague and the same should be struck off. Moreover, list 'G' having not been verified in accordance with law, the allegations deserve to be struck off and no enquiry into the same is called for."

It may be noted at the beginning that out of 28 places in list 'G' where the messes are alleged to have been established by the respondent, no evidence has been led with regard to 12 places mentioned at Serial item Nos. 1, 5, 6, 7, 8, 10, 11, 12, 14, 15, 19 & 22. There is no evidence of expenditure having been incurred in respect of messes at Pllani, Jhunjhunu and Rajgarh at Serial Nos. 4, 17 and 21. The petitioner's witnesses only say that messes were set up. The respondent's witnesses deny the same. The list 'G' has been verified on information received from Shri Satya Narain. Shri Satya Narain even though cited, has not been produced. Shri Ram Sahai PW. 21 admits that Shri Satya Narain was worker of Shri Radhey Shyam Morarka. It will be convenient to take up individually the messes where evidence about expenditure has been led.

(a) Mess at Chirawa (Serial Item No. 2):

The mess is said to have been set up at Pasariyon-ka-nohra. Shri Vasudeo PW. 19 and Shri Jaguram PW. 20 have been examined. Shri Vasudeo says that Laxmi Kant Misra paid some amount to Naraindutt Mali on account of sweets and tea. In cross-examination, the witness says that at the time of payment Naraindutt Mali had brought a paper containing the accounts. I did not see the account paper. The paper showed a claim of Rs. 1,000/- approximately and the same amount must have been paid. Naraindutt Mali who got the payment has not been produced. The witness is a Congressman, and, therefore, a partisan witness. He is a non-summoned witness. He does not specifically connect the respondent with the payment having been made by Shri Laxmi Kant Misra.

The respondent denied having set up any mess at Chirawa. He also denies that Shri Laxmi Kant Misra and Shri Vasudeo Sharma were his workers. Shri Biharlal Mishra RW. 9 says that his son Shri Laxmi Kant Misra did not visit Chirawa during the election period.

Shri Jagguram PW. 20 says that,

"I saw a mess in Pasariyon-ki-haveli. I supplied milk worth Rs. 1,240/- and bajra and moong worth Rs. 510/- and got payment from Shri Laxmi Kant Misra. I supplied milk from 25th February, 1967."

This date 25th February, 1967, is admittedly beyond the relevant period. Besides, the evidence of the witness is unreliable. He is a non-summoned witness and

highly interested because he starts from Chirawa to give evidence without knowing as to in which case he has to give evidence.

(b) *Mess at Nawalgarh:*

The mess alleged to have been set up at the house of Shri Bala Bux Birla. Shri Banwarilal Nathuramka PW. 14 states that he was entrusted with the duty of obtaining the rations for the messes which were to be run. He further says that the messes were commenced from 1st December, 1966 and he remained in charge of rations for two months up to 31st January, 1967 and incurred an expenditure of Rs. 20,000/- to Rs. 22,000/- for purchasing rations. He also produced two documents—Ex. 14/2/ and Ex. 14/3, showing the payments of Rs. 200/- to Mangilal Mal and Rs. 400/- to Shri Radhey Shyam Shah. Ex. PW 14/2 and Ex. PW 14/3 pertain to the period much before the commencement of the relevant election period. The witness says that after 31st January, 1967, one Mahavir Prasad remained in charge for purchase of rations. Shri Mahavir Prasad Pande has not been examined. As already stated above, his evidence is not reliable as he is highly interested in the petitioner.

The evidence of the petitioner himself does not advance his case to any considerable length inasmuch as he had no personal knowledge in this regard. The petitioner's own witness Shri Sanwal Mal Basotia denies that there was any mess set up at Nawalgarh.

(c) *Mess at Jhunjhunu:*

It is alleged that a mess had been run in the haveli called "Tibrewala". Shri Kanhaiyalal (PW/6) and Shri Ghasi Ram (PW/27) have been produced to prove that. Besides stating generally, these witnesses give no particulars or details of the payments made to various persons for purchase of rations, etc.

(d) *Mess at other places:*

In respect of other messes, the petitioner has examined one witness each. Without entering into the details I need only observe that after going through their statements I do not find their evidence convincing, and it has not been established that the messes were run at these places or that the respondent was in any way connected with any one of them.

In the light of the above discussions on the various items of expenditure and having regard to the evidence and materials on record the conclusions that may reasonably and safely be reached may be summed up as follows:—

- (1) That there is no reliable and acceptable evidence to prove that the respondent incurred any additional expenditure on any of the items besides that shown in return of the election expenses.
- (2) That the Swatantra Party election campaign in the Jhunjhunu Parliamentary Constituency was organised and conducted by Thakur Raghuvirsingh (PW/32) Chief Election Organiser and that an amount of Rs. 3,74,750/- was deposited in his account in the United Commercial Bank and that about rupees three to four lacs were spent in connection with the election in the Jhunjhunu Parliamentary Constituency. While it cannot be accepted that the entire amount was exclusively spent for the election of the respondent, it will be safe inference that great weightage was given to the candidature of the respondent and this may be easily connected with the role of the members of the Birla family, the senior and top executives of the Birla concerns.
- (3) That the members of the Birla family and the senior and top executives of the Birla concerns took keen interest in the election in the Jhunjhunu Parliamentary Constituency. The motivating force being—
 - (a) negative of defeating Shri Radhey Shyam Morarka in the election at all costs—
 - (b) the positive of securing the return of the respondent.
- (4) (a) That the various Birla concerns spared officers and employees for working in the Jhunjhunu Parliamentary Constituency and incurred journey and diet expenses at least in respect of the employees. There is no evidence that the respondent was expected to re-imburse them or that he actually reimbursed. The probabilities are that either the various concerns spared their employees bore the expenses or the

accounts might have been settled out of the funds of the Swatantra Party to which the Birla concerns made substantial contributions. There is no direct evidence of the extent of the expenditure but on any estimate it will exceed an amount which, if added to the amount shown in the return, will take the election expenses beyond the prescribed limit.

(b) That a number of motor vehicles were also purchased in the names of the officers of the Birla concerns and that these motor vehicles were used in connection with the election campaign. That a substantial amount of expenditure must have been incurred on petrol and petroleum products and repairs. There is, however, no evidence as to who bore the expenditure whether the concerns or the Swatantra Party. Of course, the respondent had nothing to do with the expenses. With regard to the amount, the position is the same as with regard to the expenses over employees.

(5) If the respondent can be deemed to have authorised all the expenditure indicated above, he must lose his seat. If not, the petition has to be rejected.

This brings me to the controversy on law joined by the learned counsel for the parties.

Mr. Mitra's contention is that the expenses voluntarily incurred by other persons including agents under the Election Law out of their own funds in connection the election of a candidate cannot be treated as expenditure having been incurred or authorised by a candidate or his election agent. It was submitted, to constitute an expenditure to be included in the return of election expenses the expenditure must be incurred personally by the candidate or his election agent or by some body under the authority of the returned candidate or his election agent, in a manner to involve him in pecuniary liability in a court of law. If other persons including agents under the election law incurred expenses in connection with the election of a returned candidate gratuitously, without expecting to be reimbursed or under circumstances, which do not involve a returned candidate in a pecuniary liability, the expenses cannot be considered election expenses. In support of his contention, he relied upon the absence of the expression "or his agent or any other person with the consent of a candidate" in section 123(6) of the Act, and the presence of the same in provisions relating to other corrupt practices. The principles relating to interpretation of statutes were referred to in this connection. He further relied upon *Rananjayasingh v. Baijnathsingh* and others (14), *Sheopatsingh v. Harish Chandra* (15), *Biresh Misra v. Ram Nath Sarma and others* (16), *Prabhudas v. Jorsang* (17), *Mubarak Mazdoor v. Lal Bahadur* (18), *V. B. Ray v. Ramachandra Rao and others* (19), *M. A. Muthiah Chettiar v. Saw. Ganesan* (20) and *G. Vasantha Pai v. A. Srinivasan and others* (21).

On the other hand, Mr. Pai advanced the following arguments—

For the inclusion of all expenses incurred by the agents as understood in the Election Law in the expenses deemed to have been incurred by a candidate, it was submitted, in the first instance, that section 123(6) of the Act contains the wide rule than the old rule contained in section 123(7) read with Rules 117 and 118. Concept of expenditure in the Conduct and management of elections has given place to expenditure in connection with the election under the 1956 Act.

Reliance was placed on the Supreme Court contains in *Vidya Sagar Joshi v. Surinder Nath Gautam* (22). The learned counsel also pointed out that 1956 Select Committee Report contained a clause to exempt expenses incurred by political parties being clause 4 of section 51 of 1955 Representation of the People Act Amendment Bill but this provision was dropped when the Bill was finally passed. The section has been rendered wider and all expenditure incurred or authorised in connection with the election has been included. Referring to the omission of the words "the agent" in section 123(6) of the Act, he submitted that the liability for corrupt practice is placed upon the candidate or election agent whether the candidate incurs liability through an agent or through a third person interested in his candidature. The Latin maxim "*Qui facit per alium facit per*

(14) 10 E.L.R. 129. (15) 16 E.L.R. 103; (16) 17 E.L.R. 243, (17) 28 E.L.R. 110. (18) 20 E.L.R. 176. (19) 21 E.L.R. 1. (20) 21 E.L.R. 215. (21) 22 F.T.R. 221.

(22) Civil Appeal No. 853 of 1963 decided on 13-9-68.

effect to in section 226 of the Contract Act. Commenting upon the cases relied upon by the respondent he contended that all the cases cited are concerned with services rendered by volunteers gratis without the knowledge of consent or privity of the candidate. They do not apply to a case where to the knowledge of the candidate, actual expenses are incurred by the volunteers in connection with the election. As a matter of fact, Sheopathsingh's case (15) clearly states that what their Lordships have held applicable where a friend or a relation lending the vehicle or services does not incur any additional expenditure is doing so. He particularly emphasised that their Lordships may if, however, additional expenditure is incurred, different considerations will arise, and relied upon the following observations:—

"For example, if a friend gets posters printed at his expense for a candidate, he incurs expenditure within the knowledge and that is consent. The candidate will thus be authorising expenditure which he is bound to show in his return of expenses. In lending a vehicle which the friend already has, he incurs no expenditure. If however, a friend buys a vehicle in order that he may be able to lend it for use during election, he would be incurring an expenditure which the candidate will be deemed to have authorised."

He relied upon similar observations in *Muthla Chettiar v. Saw. Ganesan* (20):—

"We shall leave open the question what would be the legal effect if the candidate's friends who lent the vehicles had themselves hired them and incurred expenditure because that question does not arise on the facts of the present case as it was not suggested anywhere that the vans and the jeep were hired by the persons who lent them to the respondent. What we have said will apply also the premises used as election offices."

The learned counsel then referred to the dictionary meaning of the term "authorised" as meaning "to give formal approval to, to sanction, approve or countenance" and relied upon some observations of Tomlin J. in *Evans v. Hulton etc., Ltd.* 1924—All India England Reports 224 referred to in *Rowland Burrows' Words and Phrases Vol. I*, and indicated three alternative contingencies, the third being described as follows:—

"Agent of the candidate incurring expenditure or third person spending money for the benefit of the candidate with his knowledge and implied consent."

In the category the man may spend his own money after telling the candidate or he may collect or arrange funds for the candidate's election and spend for his election. He also submitted that where a candidate spends through his agents, the law implies a promise to reimburse that agent under sections 217 to 220 of the Indian Contract Act. An expenditure by an agent according to him, carries with it an obligation on the part of the principal to reimburse the agent under the express provisions of the statutes and is really an expenditure of the principal. It is true, as has been held in *Vidya Sagar Joshi v. Surinder Nath Gautam* (22) that the present rule is wider than the rule under the pre-amendment Act. This, however, can have bearing only when the controversy is as to the nature and purpose of the expenditure sought to be treated as an election expense. It cannot have any significance in determining whether an expenditure actually incurred by some person other than a candidate or an election agent can be said to have been authorised. I may in passing observe that the Supreme Court in this case in connection with the meaning of expenditure made the following observations:—

"Expenditure means the amount expended and 'expended' means to pay away, lay out or spend. It really represents money out of pocket, a going out..... The word 'incurred' shows a finality."

This meaning does not lend support to the contention of Mr. Pal. With regard to the argument with reference to Select Committee Report, I need only observe that it is doubtful whether the Select Committee's Report can be legally referred to. At any rate, having regard to the decisions under the pre-amendment law in relation to expenses by political parties the petitioner's counsel cannot derive such assistance.

There can be no quarrel with the general proposition formulated by Mr. **Fai** with reference to the latin maxim quoted by him that a candidate need not incur expenditure himself. He may do so through other persons who may be his agents under the general law. It has, however, to be noted that by the Election Law the doctrine of agency is carried further than in other cases. The relation between the candidate and the agent is not the common law relation of one of principal and agent. A candidate may be responsible for the acts of one acting on his behalf though such acts are beyond the scope of the authority given or indeed in violation of express injunction. A question does arise whether the concept of extended constructive agency should be imported in connection with this corrupt practice and expenses incurred by agents under the Electoral Law should be presumed to have been authorised by the candidate. It will be useful in this connection to consider the scheme of the law relating to corrupt practices—

A combined consideration of sections 123 and 100 of the Act shows:—

(1) That an agent has been treated as a separate class in relation to the commission of some categories of corrupt practices.

(2) A corrupt practice may be committed by an agent with consent of a candidate or without his consent and there are separate provisions dealing with them. A corrupt practice committed by an agent with consent of a returned candidate will by itself be sufficient to invalidate the election but in cases of corrupt practices committed without such consent there must be in addition, proof of the result of the election in so far as it concerns a returned candidate, having materially affected to invalidate the election.

(3) Further, even on proof of the commission of the corrupt practices by an agent as also the proof of material effect on the result of the returned candidate a candidate can escape consequences on proof of certain facts as mentioned in sub-section (2). This has been provided to safeguard in part the consequences flowing from the adoption of the concept of extended constructive agency under the Electoral Law.

(4) Consent to the actual commission of a corrupt practice under section 1(b) of section 100 is evidently different from the consent which is part of the definition of the term 'agent' in the explanation item (i) to section 123 which is consent given to a person by a candidate and which cannot be given by an election agent.

(5) That an expenditure by itself does not amount to a corrupt practice. It is only when it exceeds the prescribed limit that a corrupt practice is committed. The importing of the general law of agency in relation to this corrupt practice along cannot fit in with the scheme set out above. It appears to me that the acts envisaged in other corrupt practices being *per se* wrong the legislation thought it proper to extend the doctrine of extended constructive agency or various liability in respect of these corrupt practices by introducing words "agent" in their definition in the larger interests of preventing corruption; the under-lying principle being that he should employ only trust-worthy agents and becomes responsible for their acts. In relation to this corrupt practice the legislature presumably considering that the expenditure by itself is not *per se* wrong, did not think it proper to extend the doctrine of extended constructive agency to this corrupt practice and, therefore, deleted the words "agent" while amending the Act in the year 1956. On a proper and reasonable interpretation of section 123(6) of the Act a candidate cannot be held liable for expenses incurred by agents under the Electoral Law on presumption of authorisation unless it is proved that the agents incurred expenses within the scope of his authority under the general law.

I now turn to the cases cited at the Bar. The first leading case is the Supreme Court decision in *Rananjaya Singh v. Baijnath Singh and others* (14). In that case a number of persons employed in the estate of the candidate's father worked for him in the election and if those persons and the remuneration they received from the candidate's father were included the maximum of persons that a candidate might employ on payment and the maximum expenditure he might incur under the provisions of the rules then in force would be exceeded. In holding the candidate not responsible for the expenditure their Lordships of the Supreme Court observed as follows:—

"The case, therefore, does not fall within section 123(7) at all and if that be so, it cannot come within section 123(4). It obviously was a case where a father assisted the son in the matter of the election. These

persons were the employees of the father and paid by him for working in the estate. At the request of the father they assisted the son in connection with the election which strictly speaking they were not obliged to do. Was the position in law at all different from the position that the father had given these employees a holiday on full pay and they voluntarily rendered assistance to the appellant in connection with his election? We think not. It is clear to us that the appellant these persons were neither employed nor paid by him. So far as the appellant was concerned they were mere volunteers and the learned advocate for the respondent admit that employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practices as given in section 123(7)."

Dealing with the arguments based on the spirit of the law and on unfair advantage available to candidates having rich friends or relations as against poor rivals, it was further observed.

"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

In *Sheopat Singh v. Harish Chandra* (15) a Bench of this Court made the following observations:—

"In our opinion, no such presumption can be drawn in the absence of any evidence to show that these vehicles were usually plied for hire. We are of opinion that it was for the petitioner to show that in obtaining these vehicles, the appellant authorised any expenditure, that is to say, that he incurred a pecuniary liability which could be enforced against him in a Court of law."

In *Biresh Misra v. Ram Nath Sarmar and others* (16) the following observations were made:—

"Section 77 of the Act only enjoins upon the candidate or his agent to keep an account of the expenses incurred or authorised by him. As expenditure not made by him need not be mentioned in the account one cannot be said to incur an expense unless he actually spends the money. The expenditure also cannot be said to have been authorised unless any pecuniary liability is incurred by a person."

In *Prabhudas v. Jorsang* (17) the Madras High Court taking the same view observed that the travelling expenses of polling agents which were incurred by the polling agents voluntarily and gratuitously without any intention to claim them from the candidate are not expenses incurred by the candidate and need not be included in the election expenses. It was also observed that the candidate is not bound to include in his election expenses the value of his free services.

I have considered it sufficient to extract illustrative observations from these cases and I do not consider it necessary to notice in detail all the cases on the point. Dealing with the comments of Mr. Pai on these cases, I must observe that these cases were concerned with services rendered by volunteers gratis. I also agree that there are observations in some of these cases indicating emphasis on facts and the applicability of different principles under changed facts and circumstances. I must also caution against any tendency to infer rules of thumb from these cases which can be an answer to all sorts of diversified situations. All the same, I think the general trend of opinion in these cases lends support to the view taken on construction of the legislative provisions. At any rate, they do not provide any positive support for the view contended for by Mr. Pai and I do not find anything in these cases to persuade me to alter my opinion arrived at on a consideration of the statutory provisions.

I must now refer to the recent decision of the Supreme Court in *Hansraj v. Ptd. Hariram and others* (23) on the interpretation of which the learned counsel

for the parties joined some controversy. In that case his Lordship the Chief Justice speaking on behalf of the Court, made the observations to the following effect:—

“Whichever way one looks at the matter it is quite clear in view of the decision of this Court reported in *Rananjya Singh v. Baijnath Singh and others* (1955 SCR 671), that the expenditure must be by the candidate himself and any expenditure in his interest by others (not his agents within the meaning of the term in the Election Law) is not to be taken note of.”

The learned counsel for the petitioner emphasised the words in the bracket “not his agents within the meaning of the term in the Election Law and contended that this decision of the Supreme Court supports the view canvassed by him and that the observations in the earlier decision should not have weighed in the face of this pronouncement. In that case the finding of the High Court was that the jeep was not hired by the returned candidate but by the Congress committee for the general purpose of propaganda on behalf of the Congress party. The High Court had also held that the jeep was also used by the candidate in connection with his election. In an appeal before the Supreme Court, the finding of the High Court was challenged and it was contended that the finding should be that the jeep was hired by the returned candidate, although it was used also for the propaganda of the Congress. Without adjudicating or even commenting upon the submission of the counsel for the appellant, his Lordship made the observations extracted above.

It will be proper to extract two further observations from the Supreme Court Judgment Hansraj v. Hariram (23).

1. “In this situation it is difficult to say that the whole of the benefit of the jeep went to the returned candidate and once we held the entire benefit did not go to him, we are not in a position to allocate the expenses between him and the other candidates in the other constituency.”
2. “The limit of expenditure in this case was rupees two thousand. It is obvious that if Rs. 1600 or so were to be spent on the hiring of a single vehicle, something would have to be done by way of a device to avoid showing such expenditure in the return. An expenditure of that magnitude would hardly leave any extra money available for the normal propaganda which involves printing of handbills, posters etc., and payment of workers. Therefore, the party was making it easy for the candidates to run their propaganda exclusively for themselves through vehicles supplied by the party. In the present state of the law, we cannot say that this is not permissible, but we think that it leads to avoidance of the statutory rule about expenditure and the limits on it. However, this is a matter for the Parliament to consider and not for us to rectify by a decision.”

A careful consideration and analysis of the Supreme Court decision shows that the Supreme Court did not consider it necessary to alter the finding as suggested by the counsel for the appellant and referred to the practice of the party making it easy for the candidate to run their propaganda exclusively through vehicles supplied by the parties and even deprecated the practice and yet did not hold the candidate responsible for the expenses incurred on the hiring of the vehicles. The Supreme Court had no occasion in that case to consider the question of expenditure through the agent obviously as the Himachal Pradesh Congress Committee who had hired the jeep, was not considered as the candidate's agent. The words relied upon appear to be generally used and were not intended to be used that in spite of the difference in the language of sub-section (6) of section 123 of the Act and other sub-sections, a candidate would be liable for expenses incurred voluntarily by persons who can be considered the candidate's agents under the extended view of agency.

The view reached on interpretation of the statutory provisions and on consideration of the case-law accords with the sound democratic principles and practices. It must be significantly pointed out that in a democracy the right of an individual to hold and express his opinion and to incur expenditure and a legitimate manner to secure the adoption of his views by others cannot be disputed. Further, in a democracy besides the political parties, the emergence of groups such as business groups farm groups labour groups to promote and defend their interests is natural on the premise “In unity there is strength.” These groups in addition to exert their pressure, both upon the Legislatures and executives to safeguard their interest (which is called lobbying) also on occasions play effective role and incur expenses in influencing the election of candidates to promote their

own interests. The incurring of expenses by individuals by groups and by political parties is permissible in the absence of any valid legislation banning or regulating such expenditure. Of-course the legislative may to prevent abuse of money in elections, undertake legislation to regulate use of money by individuals, groups and political parties by altogether banning contributions by individuals and business concerns or imposing ceiling limits or requiring reporting of expenses incurred as has been done in some democracies "although without much success". But, in the absence of such law, the Courts cannot be expected to take note of expenses voluntarily incurred by individuals and groups and political parties to deprive the returned candidates of their success by having resort to the doctrine of extended constructive agency in this connection. I also feel inclined to observe that if money is spent by such group or agency only on publicity in an attempt to properly educate, instruct and inform the vast electorate, there can be no objection; on the other hand, this may serve an important need of removing the political inactiveness of the people and mass inertia. Further, if the spending of the money is related to the Commission of corrupt practices such as, publication of false statement, conveyance of voters in vehicles, the candidate can be held liable for corrupt practices under the extended notion of agency in relation to these corrupt practices.

The counsel for the petitioner appeared to me to have recognised this fact and to have, therefore, laid great stress on the association of individuals and groups and parties with individual candidates and wanted me to hold that by such association they, while incurring expenditure should be treated as candidate's agents and the candidate should be held liable. It is very difficult to draw a well define line of demarcation between what is general propaganda and what is propaganda for individual candidate and, therefore, it will be hardly appropriate to import a general rule in section 123(6) by invoking the general law of agency and by reference to the expended constructive agency to make a candidate liable for the expenses voluntarily incurred by individual, groups and political parties.

Examining the arguments with reference to the dictionary meaning, I must state that authorisation pre-supposes either ownership of funds or dominion over funds. It may be conceded that unduly too narrowed view should not be taken of the word "dominion" and it may be reasonable in some cases to infer dominion of a candidate in the contingency pointed out by Mr. Pai where a candidate authorises his agents to collect funds for his candidature and to spend them as they deem proper. It may also be permissible in some cases to infer dominion of candidate over the funds from his knowledge or consent as was done in Seshadri's case(2). However, in the ultimate analysis, the question whether a particular expenditure can be said to have been authorised will be a question of fact depending upon the facts and the circumstances of individual case and it will not be at all proper and fair to lay down rules of thumb in this behalf.

In this view of the law, the extreme stand taken by the petitioner's counsel that the leading members of the Birla family, the Birla concerns, their officers, the swatantra party and its workers being treated as the respondent's agents under the Electoral law the respondent should be held liable for the entire amount spent or deemed to have been spent by the swatantra party and the Birla group of concerns and their officers, cannot be accepted.

The petitioner's counsel having however, emphasised some specific items, I proceed to examine the case in respect of such items of expenditure. Referring to the expenditure on officers and employees of the Birla concerns, the petitioner's case is that they arrived in the constituency in pursuance of some policy decision by the members of the Birla family and the senior and top executive officers of the Birla concerns and that the respondent was taken into confidence in the matter of this organisation. He also had some hand in calling some of the employees. The argument is that the respondent had a hand in getting the officers and employees and was aware of the organisational, set up and the expenditure incurred in connection with their stay in the constituency. food arrangements and travelling allowance expenses must be deemed to have been authorised by him. It was also added that if the respondent desired to escape responsibility for the expenditure the burden was on him to show to the contrary and he has failed to discharge the burden. Reliance was placed upon the decision of the Supreme Court in R. M. Seshadri V. G. Vasantha Pal(2) indicating that expenditure is a matter within the special knowledge of a candidate and that the burden cannot be on the election petitioner to prove that he incurred such expenditure himself. I have already held

earlier that the expenditure in this connection was either incurred by the Birla concerns themselves or by the swatantra party and that the respondent had nothing to do with it. I may also add that according to the petitioner's own showing the leading members of the Birla family including Shri G. D. Birla and the senior top executive officers including Shri D. P. Mandelia were parties to the organisation which was set up by them for conducting election campaign in Rajasthan. The members of the Birla family and the senior top executive officers of the Birla concerns had their own motive to oppose the candidature of Shri Radhey Shyam Morarka on account of his some adverse reports about the working of the Birla concerns. The respondent does not appear to be closely related to the Birla family. He had humble beginnings in the Birla concerns although at present he holds quite a senior position in the Birla concerns. In the Birla concerns he cannot have status similar to the leading members of the Birla family or the seniormost top executives like Shri D. P. Mandelia and naturally he could not have a final or even dominant voice in regard to the policy decisions of the members of the Birla family and the officers of the Birla concerns and in their implementation, of course, he was a candidate opposing Shri Radhey Shyam Morarka and was associated with Birla concerns and as an assistance to him in election was in accord with their general policy and plan of defeating Shri Radhey Shyam Morarka, he was allowed to have his say..... but it cannot be accepted that it was he who exclusively directed the policy and that he acquired effective dominion over the funds contributed by the Birla concerns to meet the expenses of the employees. The case of the Birla concerns sparing their officers and employees is comparable with the case of *Rananjaya Singh v. Bainath Singh* and others (14) where a father spared his employees in connection with the election of his son. In *R. M. Seshadri V. G. Vasantha Pal*(2) by a chain of circumstances a finding was arrived at that the appellant Seshadri incurred expenditure on the hiring of cars from Kumaraswamy Garage. Of course, in response to Seshadri's contention that his accounts do not show any payment for the hire of the cars, it was observed, "It is not possible for any one to say how Seshadri, if he was willing to pay for the cars, would have procured the money." Seshadri's non-appearance in evidence was also examined. The case turned upon its own facts and the petitioner's counsel cannot derive much help in the present case. Besides, it is not clear whether the Birla concerns themselves bore the expenses or they were met out by Swatantra party out of the funds received as contributions though from the Birla concerns.

The position with regard to the item of Rs. 25000 paid to M/s. Brilal Ramgopal has already been considered and no further discussion with reference to Birla concerns or swatantra party is necessary.

The respondent's liability is sought in respect of an amount of Rs. 1,50,000 sent by the "Caco" to Thakur Raghuvir Singh, Chief Organiser, Jhunjhunu District Swatantra Party. The petitioner's counsel relied upon the contents of Ex. PW 14/3 and Ex. PW 42/6, particularly the portion stating that "get these jeeps immediately in the account of our various officers and the finance should be arranged as per our decision in Pilani." According to him, Shri Radha Krishan Birla being a party to the finance decision and the expenditure being in connection with his election, he should be held liable for the amount. In the first instance, the petitioner did not come forward with any case of any expenditure having been incurred upon the purchase of vehicles. The amount on his own showing, being spent in connection with the purchase of vehicles, he cannot be allowed to set up a new case. Secondly, it is not possible to arrive at a finding that the respondent had any effective dominion over this amount. The amount was contributed by the "Caco" to the swatantra party and was spent through the swatantra party. It may be significant to point out that although primarily interested in the parliamentary elections the members of the Birla family and the senior top executive officer of the Birla concern could not remain indifferent to the elections in the Assembly constituencies on account of their evident interaction. From the documents in files A & B relied upon by the petitioner it appears that the Assembly candidates also were consulted. The petitioner himself came forward with a case that at the instance of Shri Moolchand Katewa—an Assembly candidate—payments on account of petrol charges were made, although this has not been held proved. Even in the correspondence, there is reference to the requirements of jeeps for the assembly candidates. I have already held that the swatantra party did not spend the entire money exclusive for the respondent although the respondent's candidature was given some weightage. The swatantra party having spent the money, it cannot be accepted that the respondent acquired dominion over the funds so as to justify in inference of the expenditure having been authorised by him.

While discussing the various items of expenditure I recorded an opinion that the expenditure must have been incurred on petrol and petroleum products for the vehicles used and on repairs either by the Birla concerns or by the swatantra party but on the basis of the law, I am not prepared to reach a conclusion that the respondent must be deemed to have authorised all these expenses. I also held that the Swatantra party incurred Rs. 33,1611 on publicity including payments to Birla Ship Shala & Yamuna Printing Press. There are many posters and pamphlets exclusively for the respondent but there is no proof of their having been printed and the extent of their publication and the extent of expenditure. It may be that the swatantra party might have spent the amount on those posters and pamphlets out of this amount but the respondent cannot be held liable as he cannot be said to have acquired any dominion over the funds. The swatantra party might have its own plans and policies in incurring the expenditure. Besides, the evidence is too general and vague to arrive at conclusions as to the specific amounts on printing & distribution of particular posters and pamphlets. I, therefore, cannot hold the respondent liable in respect of any expenses alleged to have been incurred by the Birla concerns or the swatantra party. Issue No. 2 is decided against the petitioner.

Issue No. 3

Issue No. 3(a) contemplates a legal controversy whether the statements imputed to the respondent and his agent Shri D. P. Mandelia constitute corrupt practices within the meaning of s. 123(4) of the Act. Issue No. 3(b) envisages the factual controversy. The relevant allegations are first made in a general manner in para 6 of the petition. The petitioner then purports to give a few instances of corrupt practices. In 6(a) it was first stated generally that the respondent No. 1, his agents and other persons with his or his election agent's consent in their speeches in several meetings held in the said constituency stated that the Respondent No. 2 was opposed to a ban on cow slaughter and/or that the respondent No. 2 had voted in the House of the People against the proposed Legislation banning the cow slaughter. In three sub-para. (i), (ii) and (iii), the petitioner gives particulars of the corrupt practices. In sub-para, (i), it is stated,—

"The Respondent No. 1 addressed public meeting at Sitlaji's tree at Nawalgarh on 13th day of January, 1967 at 4 P.M. wherein his speech he stated that the Respondent No. 2 was opposed to a ban of cow slaughter and that the Respondent No. 2 had voted in the House of the People against the proposed legislation banning the cow slaughter."

In sub-para, (ii), it is stated,—

"The Respondent No. 1 addressed a meeting at Rajgarh on 8th February, 1967, at 7-30 P.M., where in his speech he repeated the aforesaid statement concerning the Respondent No. 2".

In sub-para, (iii), it is stated,—

"Shri D. P. Mandelia, the chief worker of the respondent No. 1 acting with his consent addressed a public meeting at Bhadra on 4th February, 1967, at 4-00 P.M., where in his speech he said that the Respondent No. 2 was opposed to a ban on cow slaughter and further the Respondent No. 2 had voted in the House of the People against the proposed legislation banning the cow slaughter."

In (b), the petitioner states,—

"The Respondent No. 1 also got published by other persons some pamphlets containing the statement to the same effect. In the alternative, the petitioner says that the publishers of such pamphlets are 1st Respondent's agent or in any event persons who published the same with the consent of 1st respondent or his election agent. Hereto annexed and marked Ex. 'A' is one of such pamphlets. The petitioner craves leave to refer to and rely upon such other pamphlets when produced."

The petitioner then generally states—

"The second respondent was not opposed to ban on cow slaughter and that no legislation was proposed for banning the cow slaughter and no question of the respondent No. 2 voting in the House of the People against alleged legislation arises; and the said statements of facts are false. Respondent No. 1, his agents and other persons making the said statements believed the said statements to be false or did not believe

them to be true. The said statements were calculated to prejudice the prospects of the election of Respondent No. 2 and they spread this canard with a view to harm and prejudice the prospects of respondent No. 2. The petitioner submits that the respondent No. 1 has thereby committed the corrupt practice under section 123(4) of the Representation of the People Act, 1951."

There is no issue with regard to the allegations in sub-para (c) and it need not as such be referred to. The petitioner's case is thus confined to a false statement appearing in pamphlet Ex. 56 and two oral statements of the respondent made on 13th January, 1967 at Nawalgarh and another similar statement at Rajgarh on 8th February, 1967 and one statement of Shri D. P. Mandella at a meeting at Bhadra on 4th February, 1967. There is no evidence whatsoever with regard to the statement of Shri D. P. Mandella alleged to have been made at the Bhadra meeting. We are thus left only with the written statement in Ex. 56 and the two oral statements of the respondent himself in the two meetings.

Ex. 56 appears to have been got published by Ramnarain Sharma Bhaiyawala, Chirawa, and appears to have been printed by Om Printers, Jhunjhunu. There is no evidence as to the printing of this exhibit. The petitioner summoned Shri Ramnarain Bhaiyawala but he could not be examined. There is no evidence that the respondent was responsible for the printing of this document. The petitioner's counsel relied upon the evidence of Shri Ram Sahai PW. 21, Shri Lekhu Ram PW. 37 and Shri Matadin Bhageria PW. 42 to establish delivery of 1,500 copies of Ex. 56 by Shri Laxmi Kant Misra to Shri Ram Sahai PW. 21 and distribution by Shri Lekhuram PW. 37 and general distribution as seen by Shri Matadin Bhageria PW. 42. As the publication of this pamphlet and its distribution through these witnesses is not the subject matter of any issue, the evidence is irrelevant and cannot help the petitioner. The respondent cannot be held to have made or published the statement contained in Ex. 56.

As for the oral statement made at Nawalgarh on 13th of January, 1967 at 4.00 P.M., the evidence is supplied by the solitary statement of the petitioner himself. He states,—

"During the meeting held at Nawalgarh on 13th January which was attended by me Respondent No. 1 Shri Radha Krishan Birla made a false statement to the effect that Shri Radhey Shyam Morarka Respondent No. 2 opposed in the Parliament a bill to ban cow slaughter."

It is remarkable that he does not say that Shri Radha Krishan Birla also made a statement that Shri Radhey Shyam Morarka is opposed to ban on cow slaughter. The un-corroborated statement of the petitioner is not at all sufficient to establish that the respondent made the false statement imputed to him.

With regard to the statement at the meeting held at Rajgarh on 8th February, 1967, there is the solitary statement of Shri Radha Krishan Head Master PW. 10. The witness says,—

"Shri Radha Krishan Birla spoke against Shri Radhey Shyam Morarka and stated that he did not work during the 15 years he had been representing the constituency in the Parliament and that he voted against a Bill for banning the cow slaughter. I do not remember what else was said about Shri Radhey Shyam Morarka by Shri Radha Krishan Birla."

At some earlier stage, the witness stated,—

"I attended two meetings organised by Shri Radha Krishan Birla, one meeting organised by Kisan Sabha and the other organised by Shri Radhey Shyam Morarka. I do not remember the precise dates on which election meetings were organised by Shri Radha Krishan Birla, but they were, however, organised on some day between 10 to 15 days preceding the polling date."

Having regard to this statement, the solitary evidence of Shri Radha Krishan PW. 10 cannot be considered sufficient to establish that the respondent made the statement imputed to him. It may also be noted that he also did not say that

the respondent made a statement saying that the respondent No. 2 was opposed to ban on the cow slaughter. The petitioner has thus failed to establish the statements imputed to the respondent.

It may be significantly remarked that the person most aggrieved by the allegations made in connection with the category of corrupt practice is the Respondent No. 2 Shri Radhey Shyam Morarka about whose return at the election a declaration was initially sought and included in the election petition. He has not been examined to bring on record—

- (a) Whether the commission of corrupt practice came to his notice,
- (b) How he felt;
- (c) What steps he took to contradict the allegations or to prevent the repetition of allegations, and
- (d) In what manner and in what extent, his election was prejudicially affected.

The respondent could not avail of the opportunity to cross-examine him. Non-examination of this material witness introduces an infirmity in the petitioner's case in relation to this corrupt practice.

Regarding the controversy of law being the subject matter of Issue No. 3(a), the counsel for the respondent relied upon Case No. 30 : Pandit Ram Sarup v. Kanwar Dhakan Lal and others : of Doabia's Election Cases, Vol. X : 1964-65 Edn. : Page 172. In that case referring to a statement that a candidate, Brahmin by caste voted for the cow slaughter in the Legislative Council, it was observed,—

“Nor would such a statement, even if made, in our opinion, fell within the purview of Schedule V, Part I, sub-clause 4, inasmuch as it does not relate to the personal character or conduct of the candidate as distinguished from his political position, reputation or action.”

The West Coat and Nilgiris, NMR (See D.E.C. : Case No. 197) was followed.

In the earlier case which was followed, comment regarding a candidate as to the manner in which he voted, was held as relating to political and not his personal conduct.

After considering the precise statement referred to in the statements of the witnesses, I am of the opinion that the statements can only relate to the respondent's conduct in the Parliament, that is, to his political conduct and does not relate to his personal conduct. The Issues Nos. 3(a) and (b) are thus decided against the petitioner.

Issue No. 4

It relates to hiring, procuring and use of motor vehicles for the conveyance of voters. The relevant allegations in this connection are contained in Para. 7 of the petition. He then purporting to cite an instance of the aforesaid corrupt practice stated in Para. 7(a):

“On 15th February, 1967, 1st respondent has hired or procured and /or used several motor vehicles for the free conveyance of several electors other than himself or his family members or his agent to and from the polling stations, for example, Government Multi-purpose Higher Secondary School at Jhunjhunu. The petitioner submits that this sort of use of vehicles for free conveyance of electors to and/or from the polling stations is a corrupt practice under section 123(5) of the Representation of the People Act, 1951.”

The petitioner then purports to give the numbers of some of the vehicles, dates and places where they were used for the free conveyance of the electors and he sets out his instances. The petitioner seems to suggest that the motor vehicles were hired or procured on the 15th February, 1967, and they were used on the various dates mentioned in the six instances. It will be convenient to deal separately with each of the instances.

Firstly, the petitioner states that on 18th February, 1967, at Surajgarh Respondent No. 1 used two jeeps bearing Nos. BRN. 6580 and RSL. 810 to bring voters of Surajgarh to the polling station at Surajgarh. The allegations are denied by the respondent. The petitioner in his affidavit named Shri Narain Jasrapurwala of

Singhana, Shri Vishwanath s/o Manohar Lal Podar of Nawalgarh, Shri Mahavir Prasad Sharma of Surajgarh, Shri Mahavir Prasad Banka, Ex. M.L.A. of Bagar, Shri Shishram, M.L.A. of Rajgarh, Shri Ram Sahayji Master of Chirawa and others, from whom he derived information. In his affidavit dated 3rd October, 1967 the petitioner stated that the statements made in Para. 7 and 7(a) were true to his information received from Satya Narain amongst others. In the affidavit dated 20th November, 1967, he names the persons already stated above in addition to Shri Satya Narain. Only one person of Surajgarh—Shri Mahavir Prasad, has been named. Neither he, nor any other person named in the affidavit has been examined. The petitioner, however, examined two witnesses, Shri Vasudeo PW. 19 and Shri Ishar P.W. 22. Shri Vasudeo states,—

"At Soorajgarh we brought voters from their places to the polling station jeep cars, RSL-810 and two other jeeps whose registration numbers I do not remember."

He further says that he brought the voters from the localities of the *naiks* and *gujars* in jeep at the instance of Shri Murlidhar Dalmia. Shri Ishar P.W. 22 states,—

"I saw jeeps playing in our mohalla and some persons stating that voters who were old and female can go in jeeps for casting their votes. The persons who were stating that people could go in jeeps to cast their votes were Satya Narain Sharma and Phoolchand Jat. Many jeeps were playing, but only one jeep was seen in our mohalla. Registration number of that jeep which was playing in our mohalla was 6580."

He further states that Narain Mali, Moopa Mali, Surja Mali and Mahadeva Mali, the wives of all these four persons were conveyed in motor vehicles. The witness cannot say when he saw Shri Satya Narain Sharma during the election period for the first time. The witness could not give the specific pre-fix letters preceding 6580. He himself went on foot to the polling station to cast his vote.

I have considered the evidence of these two witnesses and do not consider them reliable. None of the candidates or their polling agents or other persons actively associated with the election who were in a position to observe and notice commission of such corrupt practices, have been examined. It may also be remarked that in the allegations the respondent himself was stated to have used the car and there was no mention of any other person having used the vehicles.

There is no evidence whether the use of vehicles came to the notice of the candidates or that of agents and whether any steps were taken to bring the matter to the notice of authorities. The indifference by candidates or their active agents towards such practices points out either towards the probability of the non-adoption of the practice, or towards the resort by all to this practice as was hinted at the Bar. Having regard to this fact and the nature of evidence, I think it proper to hold that the commission of corrupt practice has not been established.

At Sithal:

The allegations are—

"At Sithal on 18th February, 1967 the respondent No. 1 used the jeeps bearing Nos. RSL 5984, MPE 1854, MPE 1855 and RJP 873, to bring voters of Sithal and neighbouring places to polling station at Sithal."

The respondent denied the allegations.

Shri Dullah (PW/40) states, "Seths of Pilani i.e. Birlaji had collected a number of vehicles for conveying voters from various places to the polling stations. Shri Kanhaiyalal Mahajan was working for the election of Birlaji. I cannot give the full name of Birlaji for whom Kanhaiyalal was working, but he was a Birla of Pilani." In cross examination he says, "I do not know who was the driver of the jeep. I cannot give the number of jeep also. I cannot say in whose name the jeep was registered. Shri Sheonath, advocate of Jhunjhunu visited my village 5 days back and informed me that I should visit his place on 2nd October, 1968. I went to Shri Sheonath Advocate on the 2nd. He asked me to proceed to Jodhpur to give evidence. I demanded my journey expenses, but he told me

that journey expenses will be paid at Jodhpur." The witness says, "I do not know whether Shri Sheonath is a member of the Assembly or not. I do not know whether he is a member of the Parliament. He is a jat by caste. I do not know whether he contested the election from the Gudha constituency during the last general elections." The witness is entirely worthless and no reliance can be placed on his evidence.

At Jhunjhunu:

The allegations are—

"At Jhunjhunu on 15th February, 1967 the respondent No. 1 used four jeeps and cars bearing Nos. DLI 4958, MPF 1381, DLJ 8401 and RJP 1138 to bring voters of Jhunjhunu to the polling station at the places". The respondent denied the allegations. The petitioner examined three witnesses,

Shri Magraj Patodia (PW/4) Shri Radhey Shyam (PW/36) and Shri Vishwa Nath (PW/43) and relied upon Ex. 290 and Ex. PW/43/1. Shri Magraj (PW/4) states, "On 15th February, I saw voters being conveyed in vehicles from their places to the Government High School, Jhunjhunu Polling Station. I do not remember the registration numbers of the vehicles which were used for conveying the voters. I and Vishwanath Poddar a polling agent of Respondent No. 6 Shri Berisal Singh saw first respondent's workers conveying voters in vehicles from their places to the polling station... I invited attention of Vishwa Nath to this effect, and brought him outside and showed him the jeeps and the cars conveying voters and asked him to bring the matter to the notice of the Presiding Officer. Thereafter both Vishwanath and I went to the Presiding Officer. Vishwanath presented an application and obtained a receipt which was handed over by Vishwanath to me. That receipt has been produced by me and is marked Ex. 290."

Shri Radhey Shyam (PW/36)'s evidence is, "I was Presiding Officer of the Polling Station at the Government Multipurposes Higher Secondary School, Jhunjhunu. I do not remember the date when the polling took place. In connection with my polling duty I received one complaint against Shri Radha Krishan Birla from one Shri Mag Raj Patodia through Shri Vishwanath Poddar. While receiving the complaint I issued a receipt which is Ex. 290. It bears my signatures marked A to B. The original complaint was despatched by me along with the other election record." As the original complaint even though summoned from the office of the Returning Officer was not received, the counsel wanted to face the witness with the copy of the complaint but he was not permitted to do so. In cross examination he states, "I have no personal knowledge of the matter in respect of which the complaint was lodged. I do not remember who presented the complaint before me. I took no action over the complaint for two reasons. In the first instance, there was rush of voters and I could not leave the polling station. Secondly, outside the compound of the school premises there was public thorough-fare and it was not possible to ascertain the truth of the complaint".

Shri Vishwa Nath (PW/43) states, "I acted as polling agent of Shri Berisal Singh at Polling Station in the Higher Secondary School building at Jhunjhunu. I also saw voters being conveyed in motor vehicles to the polling station on behalf of Shri Radha Krishan Birla. I also reported to the police about the conveying of voters in motor-vehicles on behalf of Shri Radha Krishan Birla but the police officer refused to take any cognizance of my complaint and directed me to report the matter to the Presiding Officer.

Thereafter Shri Magraj Patodia came to me in the polling station at about 10-30 A.M. and informed me that the voters were being conveyed in motor vehicles on behalf of Shri Radha Krishan Birla and asked me to accompany him to the same place outside the polling station. I came out with Shri Magraj Patodia and saw some motor vehicles conveying the voters. We noted the numbers of the motor vehicles. I then scribed a complaint and signed it. I submitted that report to the Presiding Officer and obtained his receipt which is Ex. 290. I also requested the Presiding Officer to go outside the polling station and to see for himself the conveyance of voters in motor vehicles, but he observed that he could not go outside the polling station. I have got with me a copy of the report which I had scribed, I produce that copy which is Ex. PW 43/1."

It is regrettable that the original complaint is not available. It is also significant that no receipt was obtained on a copy of the complaint but on a separate piece of paper, Shri Magraj Patodia does not make any mention of a copy having been prepared. Shri Vishwanath's statement suggests that he prepared the copy but Shri Magraj could have no knowledge of it. Although the receipt is purported to have been given to Shri Magraj through Shri Vishwanath the complaint is alleged to have then signed only by Shri Vishwanath. When Shri Radhey Shyam (PW/36) was being examined the petitioner claimed to have a copy of the complaint with him and wanted to face the witness and subsequently the copy has been got produced through Shri Vishwanath. The fact that Shri Radhey Shyam took no action considering that the truth of the complaint could not be ascertained, indicates that the matter was taken not very seriously. No attempt was made by any side to obtain the diary prepared by Shri Radhey Shyam to find out whether any such irregularity was noticed or not. Having regard to all these circumstances I am unable to hold that the petitioner has succeeded in establishing the case.

With regard to other incidents, I do not propose to enter into a detailed discussion as in each case only one witness has been examined. I have gone through the evidence of the witnesses and find it not safe to act upon, and to hold the respondent liable for it.

Issue No. 4 is thus decided against the petitioner.

Issue No. 5:

The petitioner contends that the respondent also committed corrupt practice of bribery by giving gifts among others to Laxman Jat of Sithal with an object of inducing electors to vote for him and/or to refrain from voting for the other candidates. The relevant allegations read as follows:—

"Respondent No. 1 paid between 13th January, 1967 and 23rd February, 1967 to the leading villagers of Sithal a sum of Rs. 500 for inducing the electors of the said village to vote for him at the said election. This amount was paid at Sithal on or about 9th February, 1967 to Shri Laxman Jat of Sithal."

The respondent denied the allegations.

In the initial election petition the last two lines appearing in the amended petition "This amount was paid at Sithal on or about 9th February, 1967 to Shri Laxman Jat of Sithal did not find any place." These lines were added subsequently in order to give full and sufficient particulars. It is strange that instead of naming all the leading villagers the petitioner thought it convenient to mention that the amount was paid to Laxman Jat.

Only Bholuram (PW/16) has been examined to prove the allegations. He says, "About 8 days before the polling Seth Kanhaiyalal of our village informed me through the peon of the Panchayat that Birlaji was expected in the village and that we should collect. The villagers thereafter collected in the morning in an open chowk outside the 'haveli' of Seth Kanhaiyalal. Birlaji came at about 9 or 10 A.M. Kanhaiyalal introduced Birlaji to the villagers and sought the support of the villagers for his election. The villagers agreed to give their support to Birlaji. Birlaji then spoke to the villagers and enquired of them what they needed. The villagers told Birlaji that they stood badly in need of a hospital in the village. Birlaji told them that they should talk over the matter with him after the elections. Thereafter Birlaji and Kanhaiyalal went into the house of Kanhaiyalal and thereafter four representatives of the village, namely, Lachhman, Kaluram, Naurangram and myself were sent for. Kanhaiyalal thereupon told Birlaji that the four persons including myself were the 'mukhlis' of the village and would secure support for his election and therefore, they should be paid Rs. 500/-. Thereupon Birlaji paid Rs. 500/- to Lachhman then and there. We thereafter left for our respective houses." He further states, "I enquired of Lachhman as to how he disposed of the amount of Rs. 500/-. He informed me that some amount was paid in connection with the conveyance of voters in motor vehicles and some amount was paid in entertaining people with tea and that nothing remained with him. I did not ask him to render any account." He further says, "The amount was paid by Birlaji for use by four of us only and not for the use of the whole village." He then says, "I arrived at Jodhpur yesterday to give evidence. I received no summons in Court today. Shri Shriv Nath Singh who contested the election as a congress candidate from Gudha Legislative Assembly constituency asked me 4 or 5 days back to reach Jodhpur before the 15th to give evidence. He further informed me that at Jodhpur I would be paid journey expenses by one

Jodha Ram." (The witness pointed out towards Shri Magraj Patodia). Earlier he says that he did not support Shri Shivnath Singh but supported Indersingh Rajput in the elections. A bare reading of his statement is sufficient to show that the witness is not at all reliable and his solitary evidence is not sufficient to establish the charge of corrupt practice of bribery against the respondent. It should also be borne in mind that the petitioner has nowhere mentioned in his affidavit that he was informant as to the charge of corrupt practice of bribery.

Thus, Issue No. 5 is also decided against the petitioner.

Issue No. 6:

The relevant allegations under this issue are made in para 9(1) which reads as follows—

"Respondent No. 1 between 13th January 1967 and 23rd January 1967 promised one Bhagwandas, a former Sarpanch of the village Paparuna, that he would pay him a sum of Rs. 500/- and give him some land if he voted and induced other residents of the said village to vote for respondent No. 1 at the said election. This promise was made by respondent No. 1 in the meeting at village Paparuna on 31st Jan. 1967."

The respondent denied the allegations.

Only one witness Shri Seesram (PW/39) has been examined. The witness after stating that election meeting was held in respondent of the respondent at Paparuna, stated "After the meeting dispersed, just before leaving for Khetri Shri R. K. Birla asked me to call the Sarpanch. I called the Sarpanch. Shri Birla told the Sarpanch that he would pay Rs. 500/- to him and would also give him some land and that he should secure votes for him as it was his first chance to contest the elections. The Sarpanch promised that he would secure the votes of all the villagers in support of Shri R. K. Birla." The witness in cross examination admits that, the quantity of land was not specified. He could not give the area of the land. He could not give the date on which the election meeting was organised at village Paparuna and the promise was made. He has not been named as informant from whom the petitioner received information. His evidence is worthless and cannot be considered sufficient to establish a corrupt practice.

Issue No. 6 is decided against the petitioner.

Issue No. 7:

Having regard to the findings on earlier issues, this is decided in favour of the respondent.

Issue No. 8:

This issue does not call for any decision firstly, because the respondent's election is being upheld and secondly, because the additional prayer for a declaration in favour of the respondent No. 1 Shri Radhey Shyam Morarka has been withdrawn.

Issues Nos. 9 & 10:

It is now unnecessary to decide issues Nos. 9 and 10, the other issues having been decided on merits.

In the result, the petition is dismissed.

I had some difficulty in regard to a proper order as to costs. I strongly feel that the petitioner had been under serious handicaps in the conduct of the case. A very leading and important role was played in the election by the members of the Birla family and the senior executives of the Birla concerns residing out of the State and at different places in India. The petitioner was keen to bring on record their evidence as also the records of the Birla concerns. He cited them as witnesses but could not be successful in bringing their evidence on record on account of their residence outside the State and at several different and distant places. The respondent also cited them as his witnesses and although he was expected to be in a better position to get their evidence on record, he also did not bring their evidence on record. He remained satisfied with examining other witnesses but I was not much impressed by the nature and quality of their evidence. The respondent made a number of denials which I have not been able to accept and appreciate.

If I had any discretion in the matter, I would not have allowed costs to him. I am, however, faced with section 119 of the Act which reads as follows:—

“119, Costs.—Costs shall be in the discretion of the High Court;

Provided that where a petition is dismissed under clause (a) of section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.”

The proviso appears to leave no discretion to the Court in the matter of the costs of the returned candidate where a petition is dismissed under clause (a) of section 98 of the Act. I am of the opinion that the question of costs being a matter falling under the procedural law, the Court ought to have some discretion in the matter to be exercised, having regard to the conduct of the parties; the manner in which the proceedings are conducted and the nature and quality of the evidence produced. It may also be mentioned that once an election petition is filed, the petitioner ceases to have any effective control over its termination to avoid his own costs and the liability for the costs of the respondent. He may apply for withdrawal of the election petition but the Court may permit him to do so and may equally refuse to do so. In the latter case, he is expected to continue the proceedings and to continue further costs by himself as also by the respondent. It is remarkable that the Court having some discretion in the matter of the costs to be incurred by the petitioner and his liability for the costs of the respondent at some stage should have absolutely no discretion at a later stage, while dismissing the petition under section 98(a) of the Act.

The Legislature may of-course guide and to an extent regulate the discretion in the matter of costs but it cannot ordinarily be intended to eliminate discretion altogether. I had at one stage thought of construing the rule contained in proviso to section 119 of the Act to be a merely legislative guidance-line and directory and not mandatory and imperative eliminating Court's discretion altogether, but I hesitate to do so, having regard to the observations of the Supreme Court in Amarnath's case (5). I am, therefore, constrained to direct that the petitioner shall pay to the respondent costs (i) on account of the counsel-fee assessed accordingly to the High Court Election Rules; (ii) incurred in connection with those witnesses who were summoned through the Court and appeared in Court in compliance with the summonses and examined. The respondent shall not be entitled to any costs in respect of other witnesses.

The office will take steps to *immediately* intimate the substance of the decision to the Election Commission and the Speaker of the House of Parliament and to send to the Election Commission an authenticated copy of the decision as soon as possible.

Sd/- L. N. CHHANGANI.

[No. 82/4/67(RJ.)]

By Order,

A. N. SEN, Secy.